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PROCEEDINGS

OF THE

HIGH COURT OF IMPEACHMENT

IN THE MATTER OF

THE STATE OF TEXAS

VERSUS

W. L. McGAUGHEY,
Land Commissioner.

HAD AT AUSTIN, TEXAS, 1893.

State Court of Impeachment

Trial on Law from April 17 to 28, inclusive; Trial on
Facts from May 1 to 5, inclusive.

AUSTIN:

BEN C. JONES & CO., STATE PRINTERS.

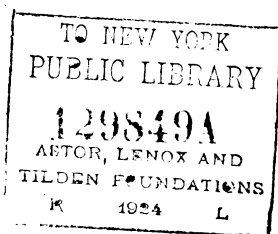
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Trans. Clerk's Office

1 Impeachment trials, U.S.; Tex.; unconv.
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NOTE.

No definite action having been taken prior to April 25th, relative to the publication of the records of the Court of Impeachment (see Senate Journal, page 638), and it being imperative that the action of the court on the demurrers, which was had before the introductory could be prepared, should be immediately published for the use of the court, necessitated the division of the "Court Journal" into two parts, viz., (a) introductory (headed "Proceedings of the High Court of Impeachment") and (b) record proper (headed "Court Journal"), each of which has a separate index.

Shuttle 20 Oct. 1773

ERRATA.

The name "J. C. Beall," page lxxvi, should read "J. A. Beall."

PROCEEDINGS
OF THE
HIGH COURT OF IMPEACHMENT.

AUSTIN, TEXAS, April 28, 1893.

INTRODUCTION.

Charges of incompetency and violation of the law having been circulated in the public prints against Hon. W. L. McGaughey, Land Commissioner of the State of Texas, and the same having been brought to the notice of the Twenty-third Legislature, Mr. Moody, member of the House, on March 7, 1893, offered the following:

Whereas, Grave charges have been made through the public prints relative to the management of the General Land Office, said charges severely reflecting upon the official conduct of Land Commissioner McGaughey; therefore be it

Resolved by the House of Representatives, the Senate concurring, That a committee of three be appointed from each body to investigate said charges, and they are hereby instructed to report the result of this investigation back to the House and Senate. Said committee shall have power to attach and compel the attendance of witnesses before it, and the chairman shall have power to administer oaths to such witnesses.

Which was adopted, and in accordance with which the Speaker appointed as members of said committee, Messrs. Moody, Smith of Hill, and Morrison.

The above resolution on being reported to the Senate on the same date, was adopted, and the President appointed Senators Yoakum, Lewis and Browning as committee on part of the Senate.

The joint committee promptly commenced its labors and continued same until March 22, 1893, when they made the following report:

AUSTIN, TEXAS, March 22, 1893.

Hon. M. M. Crane, President of the Senate, and Hon. J. H. Cochran, Speaker of the House of Representatives:

Your joint committee, appointed to investigate the Commissioner of the General Land Office of the State of Texas with reference to charges of mismanagement in his office, beg to report:

We have examined numerous witnesses, and have been furnished by the Commissioner of the General Land Office with much documentary evidence, including lists of all sales made in Harris and Liberty counties, together with the name of the purchaser and the date of the purchase, and also maps of said counties, showing the lands that were not detached

and isolated, and their relative locations. After diligent inquiry and mature deliberation, we find that the Commissioner of the General Land Office has been guilty of palpable violation of the statutes of the State in this:

That in December, 1892, and in January, 1893, he sold the public school lands in Harris and Liberty counties to land agents and land speculators, when said lands had been reserved by law and intended to be sold to actual settlers only, upon proof of actual settlement.

Section 22 of the Act of 1887 (Twentieth Legislature), page 90, reads as follows: "The Commissioner of the General Land Office, under the direction of the Governor, may withhold from lease any agricultural lands necessary for purposes of settlement, or, in his discretion, he may lease such agricultural lands in small quantities for a less period than five years, as the public interests and the development of the country may require; and no agricultural lands shall be leased if in the judgment of the Commissioner they may be in immediate demand for settlement, but such lands shall be held for settlement and sold to actual settlers only under the provisions of this act; and all sections or fractions of sections in all counties organized prior to the first day of January, 1875, except El Paso, Pecos, and Presidio counties, which sections are detached and isolated from other public lands, may be sold to any purchaser except to a corporation, at not less than \$2 per acre, upon such terms as the Commissioner of the General Land Office may prescribe."

By this section the people of Texas, in accordance with a well understood and clearly defined policy, attempted to prohibit the sale of public lands to other than actual settlers, except when such lands were isolated and detached from other public lands. Isolated and detached lands were subject to sale to any purchaser except a corporation, and lands that were not isolated and detached were set apart and reserved for sale to actual settlers only.

This law was passed in 1887, and during the first term of office of the present Land Commissioner the detached and isolated sections of land in Harris and Liberty counties were upon the market for sale to any purchaser, while the lands that were not isolated and detached were held for actual settlement in accordance with law. This obtained until about December 14, 1892, when the restriction was removed by the Land Commissioner as to Harris county, and those sections of land that had been held for sale to actual settlers were placed upon the market for sale to any purchaser, except a corporation, as isolated and detached lands. The same change of ruling was made as to Liberty county lands on January 20, 1893.

Prior to the opening up of this land for sale to any purchaser there were about thirty-one sections in Harris county and twenty-six sections in Liberty county, which were connected and adjoined, as shown by the maps, and were clearly not isolated and detached sections.

We further find that it was a rule in the Land Office, when lands were placed on the market, to notify the county clerk of the county where the land was situated, and then not to make any sales within a reasonable time, so that the residents of such county would have an equal opportunity to apply for the purchase of such lands. We find that the Commissioner of the Land Office wrote a letter to the county clerk of Harris county on December 14, 1892, informing him that all unsold State school

lands in Harris county had that day been changed from "requiring settlement" to not requiring settlement, in order to purchase. On December 16, the clerk, by telegram, acknowledged the receipt of the Commissioner's letter. On December 14, 1892, we find that David Boaz, of Fort Worth, Texas, purchased two sections of said Harris county lands, and on December 16 the remainder of said lands were sold, mostly to land agents and land speculators in Travis county.

We also find that the Commissioner notified the county clerk of Liberty county by letter on January 21, 1893, that he had "yesterday" placed all the lands in Liberty county on the market under section 22 of the act of 1887, not requiring settlement. On January 23 the clerk acknowledged the receipt of the Commissioner's letter. On January 20, the day the land was placed upon the market, David Boaz, of Fort Worth, purchased section 16 of said land.

We also find that a large portion of the Liberty county lands had been sold to residents in Austin, Travis county, before the said lands were placed upon the market. We find that as early as January 16 it was known to the land men and land speculators in Austin that the Liberty county lands were upon the market. H. P. Haldeman purchased as early as January 9; A. Schwartz, January 11; P. J. Lawless, January 16, and W. F. Simmons, of Harris county, January 19. In some instances we find that applications for purchase that were made prior to January 20 were marked "rejected," but afterward, when the lands were placed upon the market, the sales were made upon such rejected applications, and the purchasers' rights accrued from the date of such application.

The evidence shows us that the giving of notice to the county clerk was a useless and glittering formality, for before a reply or an application for purchase could have been received by mail, nearly all the lands had been sold to land agents and land speculators in Austin and to relatives of the clerks of the school land department.

The evidence before us shows that the Commissioner, up to the time the sales were made, gave the law the same construction that we do, and he refused to sell said lands to any person save and except the actual settler; and the evidence before us forces us to believe that the Commissioner was induced to change his policy concerning said lands and the construction of said law through the persuasion of a coterie of land speculators, and said lands in both of said counties, aggregating over 30,000 acres, were placed upon the market and sold before the people living in said counties were cognizant of the fact.

The evidence before us further shows that said lands had recently become valuable because of the development of the rice and fruit growing industries in that section, and were in actual demand at increased prices.

We also find that during the month of December, 1892, David Boaz, of Fort Worth, presented to John McGaughey, the head of the school land department, and to R. M. Phelps, the school land classifier, each 500 shares of mining stock of the face value of \$500, and to L. S. Ross, Jr., head of the sales department, one silk hat. We do not find that the said stock or hat was received with any wrongful purpose, but we severely deprecate the practice of heads of important departments and trusted clerks receiving gratuities from those with whom their offices bring them in contact. A favor bestowed usually expects a favor in return.

The evidence before us further shows that the Commissioner has placed

his son, John McGaughey, aged 23 years, at the head of the school land department of said office; that he is inexperienced, and, in fact, inefficient and incapable of performing the difficult and onerous duties that necessarily devolve upon him in that responsible position.

The reference to this fact is an unpleasant duty to us, but when we think of the extraordinary trust and power confided to the position that is occupied by the Commissioner's son, and the great interests that have to be controlled by him, we are constrained to say that his tender years and his want of experience in his line, and his unfamiliarity with the laws of our State concerning these lands, clearly demonstrate to our minds that he is not sufficient in age, experience, sagacity and learning to preside over the department to which he has been assigned.

Under the act of 1891, page 109, the Legislature appropriated \$2250 for salaries for two filing clerks in the Commissioner's office. The Commissioner was trying to get legislation to allow \$2600 for same two clerks, but the Legislature refused to concur with him as to the amount that should be appropriated, and appropriated only \$2250. Notwithstanding this, the Commissioner did allow the two clerks \$2600, and drew it out of a special fund of \$6000, allowed by the Legislature for additional clerks and draftsmen. We believe this is an abuse of power that is inexcusable. The people, through the Legislature, have the unquestioned right to prescribe the amount of salaries due its employes, and no one at the head of any department should be permitted to usurp the right and set at defiance the expressed will of the people with impunity, and it would be, in our opinion, a simple act of justice to deduct the amount illegally used from the salary of the Commissioner.

RECOMMENDATIONS

First. We would recommend that the Attorney General of the State of Texas be required to institute suits for the recovery of lands sold in the counties of Harris and Liberty by the Commissioner of the General Land Office in violation of the law.

Second. We believe the best interests of the State would be subserved by the Commissioner removing John McGaughey from his position as the head of the school land department, and appointing in his place a man of unquestioned ability; one well equipped by experience, training and knowledge for the arduous duties of chief of the school land bureau.

Third. We recommend that a law be enacted prohibiting the heads of all departments of State from employing any of their relatives in their offices.

C. H. YOAKUM, Chairman.
PERRY J. LEWIS,
W. H. BROWNING,
On the part of the Senate.
J. L. MOODY,
A. H. MORRISON,
T. S. SMITH,
On the part of the House.

On the introduction of the above report in the House, the following was introduced by Mr. Smith of Hill:

Resolved, That the question of whether or not the testimony taken be-

fore the joint committee shall be published, be referred to the joint committee, to report the advisability of publishing said evidence, and that they report as early as possible.

Adopted.

The committee, after considering the matter of publication, made the following report:

COMMITTEE ROOM,
AUSTIN, TEXAS, March 24, 1893.

Hon. J. H. Cochran, Speaker of the House of Representatives:

The undersigned, your committee from the House on the joint committee appointed to investigate the Commissioner of the General Land Office of the State of Texas, respectfully report:

That the resolution referred to us to recommend the advisability of whether or not the testimony and evidence taken before said joint committee should be published has been before us, and that portion of said joint committee from the Senate, respectfully say that the joint committee having reported, its offices and functions thereby ceased, hence we, the members from the House, do not feel authorized to act, but would beg to recommend that the question of the advisability of publishing said testimony, together with the report of the joint committee made to the House, be referred to a committee of seven members of the House, who shall report what action, if any, shall be taken on the said report and the publication of said testimony, and to report fully in the matter.

Respectfully submitted,

MOODY, Chairman,
SMITH.

In connection with the above report, Mr. Curry offered the following resolution:

Resolved, That the question of the publication of the testimony and evidence taken before the joint committee of the Senate and House of Representatives to investigate the charges against Land Commissioner McGaughey be referred to a special committee of seven members of the House appointed by the Speaker.

Resolved, That the report heretofore made by the said joint committee, and any other evidence, be also referred to said special committee of seven members, who shall report what action should be taken in the premises, and should the said committee recommend that impeachment proceedings be instituted; that they prepare proper articles of impeachment, and submit the same with their report.

On motion of Mr. Fields, the report was adopted.

The resolution by Mr. Curry was adopted.

In accordance with the above resolution, the Speaker announced the following committee:

Messrs. Smith of Hill, Henderson of Milam, Peck, Gough, Beall, Wynn, and Rogan.

On March 29, 1893, the committee presented the following to the House:

Mr. Speaker: I am directed by the special committee hereinafter referred to, to present the following resolution:

Resolved by the House of Representatives, That the special committee of seven to whom was referred the report of the joint committee to investi-

gate the Land Office and Land Commissioner, be empowered to take such other evidence and testimony as to them may seem proper, and to issue process and attachment for witnesses, and to require the production of any paper or papers, and to employ a stenographer, and that the chairman or acting chairman of said committee of seven be empowered to administer an oath to any witness who may appear before said committee.

SMITH of Hill, Chairman.

Adopted.

Continuing their labors until April 6, 1893, the committee submitted the following reports:

MAJORITY REPORT.

COMMITTEE ROOM,
AUSTIN, TEXAS, April 6, 1893.

Hon. J. H. Cochran, Speaker of the House of Representatives:

Your special committee to whom was referred the report of the joint committee of the Senate and House concerning certain charges against W. L. McGaughey, the Commissioner of the General Land Office, with instructions to examine into the matters therein mentioned, and to make report to the House concerning said charges, and to make recommendations as to whether said W. L. McGaughey should be impeached, etc., beg to submit the following report:

We have carefully examined into said matters, and we find the charges in said report to be fully sustained by the evidence, and we adopt the same as a part of this report, with the exception of that part of the report relating to two filing clerks, which is subject to the following modification as shown by evidence not before said committee:

The Twenty-second Legislature made an appropriation in bulk of \$2250 for two filing clerks, and Mr. Gaither (one of said clerks) notified the Commissioner that if he construed said appropriation to mean that the same should be equally divided between the two clerks, allowing \$1125 to each, that he would resign. The Commissioner and his chief clerk, William Bramlette, thereupon made the following arrangement and construction concerning said appropriation, to-wit:

One of said clerks was transferred for a period of three and one-half months to the school land department and rendered service therein, and was paid out of the appropriation for clerk hire in that department for that time, and in the meantime Mr. Gaither was continued as clerk in the filing department on his former salary of \$1400 per annum, which was paid out of said \$2250, and at the expiration of three and one-half months the other clerk was retransferred to the filing department, and his salary, at the rate of \$1200 per annum for the remainder of the year, was paid out of said \$2250. While there was technically no diversion of one appropriation from one fund to another, yet, by a trick of official legerdemain, the implied purpose of the Legislature in making the appropriation of \$2250 for the salaries of two filing clerks was thwarted, and, under the circumstances, without adequate justification, and we deem the strictures of the joint committee merited, even under this modification of the facts.

We find the following matters of fact pertaining to the administration of the General Land Office by W. L. McGaughey, Commissioner, involving gross official misconduct and violations of the Constitution and stat-

utes of the State on the part of said officer, to-wit: That in December, 1892, in gross violation of section 22, of chapter —, of the Acts of 1887, page 90, the said W. L. McGaughey, as Commissioner of the General Land Office, willfully and erroneously classified a large number of sections of public free school lands, to-wit, thirty-one sections situated in a block in Harris county, as detached and isolated from other public lands, and sold the same to others than actual settlers, when by the terms of said act said lands were not so detached and isolated, and were reserved for sale to actual settlers only.

Second. That in January, 1893, in gross violation of section 22, of chapter —, of the act of 1887, page 90, the said W. L. McGaughey, as Commissioner of the General Land Office, willfully and erroneously classified a large number of sections of public free school lands, to-wit, twenty-six sections situated in a block in Liberty county, as detached and isolated from other public lands, and sold the same to others than actual settlers, when by the terms of said act said lands were not so detached and isolated, and were reserved for sale to actual settlers only.

Third. That said lands so sold in Harris and Liberty counties were worth from \$3.50 to \$5 per acre, all of which said W. L. McGaughey knew or might have known by the use of ordinary diligence, but by the gross and culpable negligence of the Commissioner the same were sold at \$2 per acre.

Fourth. That said lands in Harris and Liberty counties were so offered for sale and sold to a coterie of land agents and speculators before the notices required by law had been received and recorded in the offices of the county clerks in said counties, and thereby fair competition for the purchase of said lands was denied to the residents of said counties wherein said lands were situated.

Fifth. That the construction of said section 22 of said act of 1887 being a matter of doubt in the mind of said W. L. McGaughey with respect to the lands in Harris and Liberty counties, the said W. L. McGaughey, in violation of the provisions of said act requiring him to call upon the Attorney General for advice thereon, obstinately and willfully refused to call upon said Attorney General for such advice, and flagrantly, and to the great injury of the State, misconstrued said section, as shown in the foregoing findings of this report.

Sixth. That during the months of November and December, 1892, and January, 1893, said W. L. McGaughey, in gross violation of the regulations of the General Land Office, and of the laws of the State relating to the classification and valuation of timbered public free school lands, reclassified and reduced the value of the timber on a large number of timbered sections in the counties of Jasper, Newton and Orange. In many instances said reductions in value for the timber amounted to from one-half to one-fourth of the original valuation placed upon said timber several years ago, and said reductions were made upon the ex parte unsworn statements of the county surveyor of Jasper county, who was acting under the employment of persons offering to buy said timber, as the said Commissioner well knew, and upon such revaluation, said W. L. McGaughey, without notice, at once made sales thereof at the reduced valuation aforesaid to said parties applying for the purchase thereof.

Seventh. That in July, 1891, one Joseph Funk, being the lessee and in possession of five sections of the public free school lands situated in

the counties of Tom Green, Sterling and Irion, under a lease contract with the State expiring about September 1, 1891, and having a preferred right under the law to renew his lease to said lands for another term, made his application in due form therefor on the 27th day of July, 1891, and under the law was entitled to have said land let to him, yet the said W. L. McGaughey in violation of the law, and of the rights of said Funk, refused to lease said land to him, and arbitrarily leased the same to one Charles Schauer, who was not then and there entitled to the same, and whose application was filed subsequent to the application of said Funk.

Eighth. That said W. L. McGaughey has been guilty of gross negligence and violation of duty in knowingly and willfully placing and retaining at the head of an important department in his office, to-wit, the department of public free school lands, an inexperienced and incompetent clerk, to-wit, John McGaughey.

Ninth. That said W. L. McGaughey has habitually violated the law requiring that persons should not be permitted to examine the files and archives of said office without first obtaining the written consent of the Commissioner, or the chief clerk, and an order for the detail of a clerk to be present during such examination.

Tenth. That in violation of the law, and of the rules and practices of the General Land Office, said W. L. McGaughey, as such Commissioner, has permitted persons to remain in the Land Office after office hours, and to have unrestricted access to the archives of said office.

Eleventh. That the Commissioner, W. L. McGaughey, in violation of the laws of the State, permitted D. H. and J. W. Schneider, and other persons whose names are to the committee unknown, to retain possession of certain public free school lands after their lease on said lands had expired, and without authority of law, extended the time in which the said persons, to-wit, D. H. and J. W. Schneider and others, as aforesaid, might pay such rental upon said school lands; and said lease price and rental has never been paid, and the State has, by reason of such violation of the law, lost certain rental due by the said parties to the public free school fund.

Twelfth. That said W. L. McGaughey has been guilty of gross negligence and violation of official duty, in that he has knowingly and willfully retained in his employ as clerks in the said Land Office certain persons who have received and accepted presents of value from persons having and doing business with the General Land Office.

We therefore recommend that the following resolutions be adopted by the House, to-wit:

Resolved by the House of Representatives of the State of Texas: First. That W. L. McGaughey, Commissioner of the General Land Office of the State of Texas, be impeached for high crimes and misdemeanors, and for violation of the Constitution and laws of the State, and of his oath of office, as shown in the charges presented in the report of the special committee, and such other charges as may be adopted by the House.

Second. That a committee of seven members of the House of Representatives be appointed by the Speaker to impeach said W. L. McGaughey, Commissioner of the General Land Office of the State of Texas, at the bar of the Senate, and to state that articles against him will be exhibited in due time, and made good before the Senate, and to

demand that the Senate take orders for the appearance of the party to answer to the impeachment; and to prepare and report for approval by the House articles of impeachment, and upon approval by the House of the same, to present the same to the Senate, and to act as a committee of managers to conduct said impeachment.

And we further recommend that the evidence taken before said joint committee and before this committee be not published pending impeachment proceedings.

T. S. HENDERSON, Acting Chairman,
J. R. GOUGH,
J. A. BEALL,
E. H. ROGAN,
T. C. WYNN.

MINORITY REPORT.

COMMITTEE ROOM,
AUSTIN, TEXAS, April 6, 1893.

Hon. J. H. Cochran, Speaker of the House of Representatives:

SIR: I do not concur in the report submitted by a majority of the committee heretofore appointed to report upon the charges against Land Commissioner W. L. McGaughey. I do not believe that the public interest would be subserved by impeachment. While I do not believe that the Commissioner acted corruptly, I concede that he has not displayed the firmness and discretion in the performance of some of his official duties which the public had a right to expect at his hands. It is not my purpose to palliate any act of his which is improper. At the same time we should not judge him too severely. The Constitution does not require that he shall be learned in the law, and most of his trouble has arisen from a misconstruction of statutes pertaining to his office.

I respectfully submit the following:

First. I concur in the findings and recommendations of the joint committee heretofore appointed herein on the part of the House and Senate.

Second. I favor the publication of the testimony taken before both committees.

Third. I am opposed to impeaching the Commissioner, for the reason that there is no sufficient evidence that he acted corruptly. While some of his acts are subject to censure and should be corrected, I do not believe that impeachment should be resorted to, for it is not believed that he will persist in an indefensible course. The character and established reputation of the Commissioner justify us in believing that he will not continue or repeat official acts which can not be defended even by his friends. While these acts, if persisted in, would destroy the political reputation of any officer, yet until they were called to the attention of the Commissioner it seems that he had precedents to justify him in some of his errors. Believing that he has not acted corruptly, I oppose impeachment. In this connection I adopt the language of an American jurist, whose learning was supplemented by extensive knowledge and observation of public affairs: "The process of impeachment is tedious and expensive, and the requirement of two-thirds majority in order to convict renders it generally inefficient. As most of the officers of the government have a term fixed to the enjoyment of their offices, it has been usually thought wiser to let the limitation effect the removal than to engage in the costly

and unsatisfactory process of impeachment." See Miller on the Constitution, page 203.

W. M. PECK.

On the following day, April 7, the majority report was adopted by the following vote:

YEAS—80.

Alston,	Graves,	Murrell,
Ball,	Greer,	Nolan,
Barbee of Freestone,	Griffin,	Onion,
Barry,	Haller,	Phillips,
Bayne,	Hamilton,	Pickett,
Breeding,	Hawkins,	Ragsdale,
Broocks,	Henderson of Lamar,	Rodriguez,
Brown,	Henry,	Rogers of Anderson,
Burleson,	Hodges,	Roger of Titus,
Cain,	Hood of Fannin,	Rogers of McLennan,
Calhoun,	Jackson of Burleson,	Rudd,
Cocke,	James,	Sebastian,
Curry,	Kennedy of Bee,	Sherrill,
Dashiell,	Kennedy of Harris,	Slayden,
Davis of Falls,	King of Rockwall,	Strange,
Dean,	King of Ellis,	Sumner,
Dever,	Kirk,	Talbot,
Dorow,	Lindsey,	Tankersley,
Faubion,	Lloyd,	Taylor,
Fagan,	McElwee,	Truit,
Feagin,	McFall,	Turner,
Fields,	McFarland,	Turney,
Flack,	McGehee,	Weeks,
Floyd,	Mills,	Weinert,
Fraser,	Moody,	Wester,
Golden,	Morrison,	Young,
Gossett,	Murray,	

NAYS—21.

Aldridge,	Dills,	Meyer,
Baker of Red River,	Finlay,	Newton,
Baker of DeWitt,	Hood of Parker,	Rowell,
Barron,	Jackson of Colorado,	Russell,
Chambers,	Kenedy,	Simmons of Grayson,
Chandler,	Maddox,	Templeton,
Cunningham,	McLemore,	Urbahn.

EXCUSED FROM VOTING—7.

Beall,	Peck,	Smith of Smith,
Gough,	Rogan,	Wynn.
Henderson of Milam,		

ABSENT—6.

Dodd,	Peter,	Wheless,
Moore,	Townsend,	Wohlford.

EXCUSED—13.

Ballowe,	Graham,	Simmons of Maverick,
Barbee of Wharton,	Kennedy of Starr,	Smith of Hill,
Davis of Walker,	Long,	White,
Erskine,	Martin,	Wilson.
Garrett,		

Mr. Truit then moved that a committee of ten members of the House be appointed by the Speaker to prepare articles of impeachment against Hon. W. L. McGaughey, and present the same to the Senate, and manage the impeachment proceedings before the Senate.

Carried.

The Speaker accordingly announced the following committee: Messrs. Smith of Hill, Henderson of Milam, Gough, Beall, Wynn, Rogan, Gossett, Fagan, Calhoun, Dashiell.

Mr. Gossett declining to act, Mr. Robert H. Rogers was appointed in his stead.

On April 14, 1893, the committee of managers for the House appeared before the bar of the Senate and made the following announcement:

Mr. President: In accordance with a resolution adopted by the House of Representatives of the Twenty-third Legislature of the State of Texas, on the 7th day of April, A. D. 1893, we (a committee appointed for that purpose) appear before your honorable body, and in the name of the House of Representatives, and of all the people of the State of Texas, do impeach the Hon. W. L. McGaughey, Commissioner of the General Land Office of the State of Texas, of high crimes and misdemeanors in office and for a violation of the Constitution and laws of the State and of his oath of office.

We further inform your honorable body that the House of Representatives will in due time exhibit particular articles of impeachment against him and make good the same. We therefore request that the Senate take order for the appearance of the said W. L. McGaughey to answer to said impeachment, and to set a day and adopt rules for the hearing of the cause.

This committee has been appointed by the House as a board of managers to conduct the prosecution.

(Signed)

T. S. SMITH, Chairman.

T. S. HENDERSON,

J. R. GOUGH,

L. T. DASHIELL,

J. A. BEALL,

B. A. CALHOUN,

E. W. FAGAN,

E. H. ROGAN,

T. C. WYNN,

ROBERT H. ROGERS.

Senator Lewis moved that the House be notified that in the impeachment of the Hon. W. L. McGaughey, Commissioner of the General Land Office, the Senate will take proper order therein, of which due notice shall be given to the House of Representatives.

So ordered, and in furtherance of which, on April 17, the following resolution was introduced in the Senate, to-wit:

By Senator Cranford:

Resolved, That at 12 o'clock m. on this the 17th day of April, the Senate will resolve itself into a court of impeachment, at which time the following oath or affirmation shall be administered by the chief justice or some associate justice of the Supreme Court to the President of the Senate, and by him to the members of the Senate, to-wit: "I do solemnly swear (or affirm, as the case may be), that in all things appertaining to the trial of the impeachment of W. L. McGaughey, Commissioner of the General Land Office of the State of Texas, I will do impartial justice according to the law, so help me God;" which court of impeachment being thus formed will at the time aforesaid receive the managers appointed by the House of Representatives to exhibit articles of impeach-

ment in the name of themselves and all the people of the State of Texas, against W. L. McGaughey, Commissioner of the General Land Office of the State of Texas.

2. The managers of the impeachment shall be introduced to the bar of the Senate, and shall signify that they are ready to exhibit articles of impeachment against said W. L. McGaughey; the President of the Senate shall announce that the Senate is now sitting as a court of impeachment, and all persons are commanded to keep silent while the proper authorities are exhibiting to this body articles of impeachment against said W. L. McGaughey, Commissioner, etc., after which the articles shall be exhibited, and the President of the Senate will take proper orders on the subject of impeachment, of which due notice shall be given to the House of Representatives.

Adopted.

At 12 m. the chair announced that the hour fixed by resolution for the Senate to resolve itself into a court of impeachment to try Hon. W. L. McGaughey, Commissioner of the General Land Office of the State of Texas, had arrived.

Senator Cranford moved that the Senate do now resolve itself into a court of impeachment for the above named purpose.

Carried.

IN COURT.

Chief Justice of the Supreme Court John W. Stayton, accompanied by Associate Justice John L. Henry, appeared at the President's stand, and the Chief Justice administered to the President of the Senate the following oath:

"Do you solemnly swear that in all things appertaining to the trial of the impeachment of W. L. McGaughey, Commissioner of the General Land Office of the State of Texas, you will do impartial justice according to the law, so help you God."

The President directed the Secretary to call the roll of the Senate, the following answering to their names:

PRESENT—26.

Agnew,	Goss,	Pressler,
Atlee,	Greer,	Shelburne,
Baldwin,	Hutchison,	Simpson,
Boren,	Imboden,	Smith,
Bowser,	Jester,	Steele,
Cranford,	Lawhon,	Swayne,
Crowley,	Lewis,	Tips,
Dean,	McComb,	Yoakum.
Dickson,	McKinney,	

ABSENT—1.

Douglass.

EXCUSED—4.

Browning,	Whitaker,	Woods.
Kearby,		

The Senators standing en masse, each with his right hand uplifted, took the following oath:

"Do you, and each of you, solemnly swear that in all things appertaining to the trial of the impeachment of W. L. McGaughey, Commis-

sioner of the General Land Office of the State of Texas, you will do impartial justice according to law, so help you God."

The managers for the House being notified that the Court was ready to receive them, appeared before the bar of the Court and made the following announcement:

Mr. President: The board of managers appointed by the House of Representatives to conduct the prosecution in the impeachment cause of the House of Representatives and all the people of Texas v. the Hon. W. L. McGaughey, Commissioner of the General Land Office of the State of Texas, beg leave in the name of the House of Representatives to file the following articles of impeachment, said articles having been approved by the House as shown by the endorsement of the Chief Clerk made thereon.

We request that the articles be filed and proper order taken thereon.

T. S. SMITH, Chairman,

T. S. HENDERSON,

E. H. ROGAN,

J. R. GOUGH,

E. W. FAGAN,

B. A. CALHOUN,

J. C. BEALL,

ROBT H. ROGERS,

L. T. DASHIELL,

T. C. WYNN.

The President stated that the articles would be properly filed, and proper action taken thereon.

Senator Cranford moved that the reading of the articles of impeachment (see below) be dispensed with, and that the court of impeachment adjourn subject to the call of the Senate.

Carried, and the court adjourned accordingly.

ARTICLES OF IMPEACHMENT.

Articles adopted and exhibited by the House of Representatives, in the name of themselves and of all the people of the State of Texas, against W. L. McGaughey, Commissioner of the General Land Office of the State of Texas, in maintenance and support of their impeachment against him for crimes and misdemeanors in office, and for the violations of the Constitution and laws of the State of Texas, and of the duties of his office:

Article 1. That W. L. McGaughey, Commissioner of the General Land Office of the State of Texas, unmindful of the duties of his office, and in violation of his his oath of office, did, on the 14th day of October, A. D. 1892. in the county of Travis and State of Texas, as Commissioner of the General Land Office, unlawfully, knowingly, and in violation of the laws of the State regulating the sale of public free school lands, offer for sale, and sell to persons who were not then and there actual settlers on such lands, the following described sections of the public free school lands of the State of Texas, situated in Harris County, to-wit:

Sections 16, 18, 20, 22, 24, 28, 30, 32, 34, 36, 46, 48, 50, 52, 54, 58, 60, 62, 64, 66, 68, 70, 72, 74, 76, 78, 80, 82, 84, 86, and 88, in block No. —, of Houston and Texas Central Railroad location, which said sections of public free school lands were not then and there under the law subject to sale to others than actual settlers, as said W. L. McGaughey then and

there well knew, but were reserved for sale to actual settlers only. And the said W. L. McGaughey was then and there as aforesaid guilty of gross misconduct in office, and of a wilful and palpable violation of the laws of the State of Texas.

Article 2. That said W. L. McGaughey, Commissioner of the General Land Office of the State of Texas, unmindful of the duties of his office, and in violation of his oath of office, on the 14th day of October, A. D. 1892, and on divers days thereafter, up to and including the 16th day of December, A. D. 1892, in the county of Travis and State of Texas, as such Commissioner of the General Land Office, unlawfully and in violation of the statutes of the State regulating the sale of the public free school lands of the State, did offer for sale as sections of public free school lands detached and isolated from other public lands, and did sell the same to other than actual settlers thereon, the following sections of the public free school lands of the State of Texas, situated in Harris county, Texas, to-wit:

Sections 16, 18, 20, 22, 24, 28, 30, 32, 34, 36, 46, 48, 50, 52, 54, 58, 60, 62, 64, 66, 68, 70, 72, 74, 76, 78, 80, 82, 84, 86, and 88, in block No. 2, of the Houston and Texas Central Railroad surveys, which said sections of land were not then and there isolated and detached from other public lands within the meaning of the law, and were not then and there subject to sale to other than actual settlers, but were reserved by law for sale to actual settlers only, all of which was then and there well known to said W. L. McGaughey, Commissioner, as aforesaid. And said W. L. McGaughey was then and there as aforesaid guilty of misconduct in office, and of a gross violation of chapter 99 of the acts of the Twentieth Legislature of the State of Texas, as amended by chapter 56 of the acts of the Twenty-first Legislature of the State of Texas, relating to the lease and sale of the public free school lands of the State.

Article 3. That W. L. McGaughey, Commissioner of the General Land Office of the State of Texas, unmindful of the duties of his office, and in violation of his oath of office, did, on the dates hereinafter mentioned, in the county of Travis, State of Texas, as such Commissioner of the General Land Office, unlawfully, and in violation of the laws of the State regulating the sales of the public free school lands of the State, wilfully and knowingly offer for sale, and sell to persons who were not then and there actual settlers on such lands, certain sections of public free school lands situated in Harris county, Texas, which were not then and there under the law subject to sale to others than actual settlers, but were reserved for sale to actual settlers only, all of which was then and there well known to said W. L. McGaughey, Commissioner of the General Land Office, as aforesaid. Said several sections so offered for sale and sold, and the dates of sale, and the names of the purchasers of the respective sections are as follows, to-wit:

Certain sections in block No. 2 of the surveys in the name of the Houston and Texas Central Railway company, to-wit:

No. of sec.	Name of purchaser.	Date of sale.
16.....	C. D. Dillon	Oct. 14, 1892
20.....	F. M. Beatty	Dec. 16, 1892
22.....	F. M. Beatty	Dec. 16, 1892
24.....	C. D. Dillon	Oct. 14, 1892

No. of sec.	Name of purchaser.	Date of sale.
28.....	F. M. Beatty.....	Dec. 16, 1892
30.....	E. R. McLean.....	Dec. 16, 1892
32.....	W. Thompson.....	Dec. 16, 1892
34.....	C. D. Dillon.....	Oct. 14, 1892
36.....	F. P. McLaughlin.....	Dec. 16, 1892
46.....	F. P. McLaughlin.....	Dec. 16, 1892
48.....	E. R. McLean.....	Dec. 16, 1892
50.....	F. M. Beatty.....	Dec. 16, 1892
52.....	W. Thompson.....	Dec. 16, 1892
54.....	W. Thompson.....	Dec. 16, 1892
58.....	W. Thompson.....	Dec. 16, 1892
60.....	F. P. McLaughlin.....	Dec. 16, 1892
62.....	S. D. DeCordova.....	Dec. 16, 1892
64.....	I. C. Stafford.....	Dec. 16, 1892
66.....	David Boaz.....	Dec. 14, 1892
68.....	D. R. McLean.....	Dec. 16, 1892
70.....	T. F. Taylor.....	Dec. 16, 1892
72.....	T. F. Taylor.....	Dec. 16, 1892
74.....	T. F. Taylor.....	Dec. 16, 1892
76.....	T. F. Taylor.....	Dec. 16, 1892
78.....	S. D. DeCordova.....	Dec. 16, 1892
80.....	David Boaz.....	Dec. 14, 1892
82.....	P. M. Cuney.....	Oct. 23, 1892
84.....	C. D. Dillon.....	Oct. 14, 1892
86.....	S. D. DeCordova.....	Dec. 16, 1892
88.....	S. D. DeCordova.....	Dec. 16, 1892

And said purchasers aforesaid were not then and there actual settlers on said sections sold to them respectively, as said W. L. McGaughey then and there well knew.

Article 4. That said W. L. McGaughey, Commissioner of the General Land Office of the State of Texas, unmindful of the duties of his office, and in violation of his oath of office, did, on the several dates hereinafter mentioned, in the county of Travis, in the State of Texas, as such Commissioner of the General Land Office, unlawfully, knowingly, and in violation of the laws of the State regulating the sale of the public free school lands of the State, erroneously offer for sale as sections of public free school lands isolated and detached from other public lands, and did sell the same to others than actual settlers thereon, certain sections of public school lands situated in Harris county, Texas, which were not then and there under the law isolated and detached from other public lands, and were not subject to sale to others than actual settlers, but were then and there reserved by law for sale to actual settlers only, all of which was then and there well known to said W. L. McGaughey, Commissioner of the General Land Office as aforesaid. Said several sections of land so offered for sale and sold as aforesaid, and the dates of sale and the names of the purchasers of the respective sections are as follows, to-wit, said sections all being in block No. 2 of the Houston and Texas Central railway surveys, and are as follows:

No. of sec.	Name of purchaser.	Date of sale.
16.....	C. D. Dillon.....	Oct. 14, 1892
24.....	C. D. Dillon.....	Oct. 14, 1892
34.....	C. D. Dillon.....	Oct. 14, 1892
84.....	C. D. Dillon.....	Oct. 14, 1892
18.....	J. I. Dillon.....	Oct. 14, 1892
64.....	I. C. Stafford.....	Oct. 23, 1892
82.....	P. M. Cuney.....	Oct. 23, 1892
66.....	David Boaz.....	Dec. 14, 1892
80.....	David Boaz.....	Dec. 14, 1892
20.....	F. M. Beatty.....	Dec. 16, 1892
22.....	F. M. Beatty.....	Dec. 16, 1892
28.....	F. M. Beatty.....	Dec. 16, 1892
50.....	F. M. Beatty.....	Dec. 16, 1892
30.....	E. R. McLean.....	Dec. 16, 1892
48.....	E. R. McLean.....	Dec. 16, 1892
68.....	E. R. McLean.....	Dec. 16, 1892
32.....	W. Thompson.....	Dec. 16, 1892
52.....	W. Thompson.....	Dec. 16, 1892
54.....	W. Thompson.....	Dec. 16, 1892
58.....	W. Thompson.....	Dec. 16, 1892
36.....	F. P. McLaughlin.....	Dec. 16, 1882
46.....	F. P. McLaughlin.....	Dec. 16, 1892
60.....	F. P. McLaughlin.....	Dec. 16, 1892
62.....	S. D. DeCordova.....	Dec. 16, 1892
78.....	S. D. DeCordova.....	Dec. 16, 1892
86.....	S. D. DeCordova.....	Dec. 16, 1892
88.....	S. D. DeCordova.....	Dec. 16, 1892
70.....	T. F. Taylor.....	Dec. 16, 1892
72.....	T. F. Taylor.....	Dec. 16, 1892
74.....	T. F. Taylor.....	Dec. 16, 1892
76.....	T. F. Taylor.....	Dec. 16, 1892

And the said W. L. McGaughey, in manner and form aforesaid, was then and there guilty of a gross violation of the duties of his office and of the laws of the State, and especially of chapter 99 of the Acts of the Twentieth Legislature of the State of Texas, as amended by chapter 56 of the Acts of the Twenty-first Legislature.

Article 5. That W. L. McGaughey, Commissioner of the General Land Office of the State of Texas, unmindful of the duties of his office, and in violation of his oath of office, did, on the 14th day of October, A. D. 1892, and on divers days thereafter, up to and including the 16th day of December, A. D. 1892, in the county of Travis, in the State of Texas, as Commissioner of the General Land Office, unlawfully, knowingly, and by gross negligence, offer for sale, and sell at the price of \$2 per acre, said sections of public free school lands situated in Harris county, and described in articles 1 to 4, inclusive, of this exhibit, which descriptions are here referred to and made a part hereof, which said price was greatly below the real worth of said lands, the said sections each being then and there worth the sum of \$5 per acre, as said W. L. McGaughey then and there well knew.

Article 6. That W. L. McGaughey, Commissioner of the General Land Office of the State of Texas, unmindful of the duties of his office, and in

violation of his oath of office, did, on the 14th day of October, A. D. 1892, and up to and including the 16th day of December, 1892, unlawfully, knowingly offer for sale and sell, as sections isolated and detached from other public lands, the following sections of public free school lands situated in Harris county, Texas, to-wit, sections 16, 18, 22, 24, 28, 30, 32, 34, 36, 46, 48, 50, 52, 54, 58, 60, 62, 64, 66, 68, 70, 72, 74, 76, 78, 80, 82, 84, 86, and 88, in block No. 2, of the Houston and Texas Central Railway survey, without first giving to the county clerk of said county notice in writing of the valuation fixed upon each section of said land, all of which was then and there in violation of the duties of his office and of the laws of the State, and especially of the provisions of chapter 99 of the acts of the Twentieth Legislature of the State of Texas regulating the sale of the public free school lands.

Article 7. That W. L. McGaughey, Commissioner of the General Land Office of the State of Texas, unmindful of the high duties of his office, and in violation of his oath of office, in the county of Travis, State of Texas, on the 16th day of December, A. D. 1892, did unlawfully and corruptly collude with David Boaz, E. R. McLean, F. M. Beatty, S. D. DeCordova, T. F. Taylor, and others for the unlawful purpose of enabling and permitting the persons aforesaid to purchase the said sections of public free school lands in Harris county, described in the foregoing articles of this exhibit, to which reference for description is here made, in violation of the spirit and the intent of the law, and at greatly less than their value, and to give them an unfair advantage over the other citizens of the State, and especially over citizens residing in the vicinity of said lands, and did then and there in furtherance of said unlawful purpose aforesaid, price said lands to each person as detached and isolated from other public lands, when in truth and in fact the same were not so detached and isolated, as said W. L. McGaughey then and there well knew, and did then and there, without first giving the notice to the county clerk of Harris county, as required by law, value the land at the price of \$2 per acre, and did then and there offer the same for sale to said persons aforesaid, and did then and there immediately sell the same to said persons aforesaid at said price, when in truth and in fact the same were worth the sum of \$5 per acre per section; when in truth and in fact other parties, and especially persons residing in the same vicinity of said lands, who desired an opportunity to purchase the same when the same should be offered for sale, were deprived of any opportunity to apply for the purchase thereof, as said W. L. McGaughey then and there well knew.

Article 8. That W. L. McGaughey, Commissioner of the General Land Office of the State of Texas, unmindful of the duties of his office, and in violation of his oath of office, did on the 14th day of December, A. D. 1892, and up to and including the 16th day of December, 1892, in the county of Travis, State of Texas, willfully, illegally, and obstinately fail and refuse to call upon the Attorney General for advice upon the question as to whether or not the sections of public free school lands situated in Harris county and described in the foregoing articles of this exhibit, to which reference is here made, were detached and isolated from other public lands within the meaning of the law regulating the sale of school lands, and on the question as to whether or not said sections of land aforesaid were under the laws aforesaid subject to sale to others than actual settlers.

That said questions, and each of them, then and there involved the construction to be given to article 22, of chapter 99, of the acts of the Twentieth Legislature, as amended by chapter 56 of the Twenty-first Legislature of the State of Texas, and the meaning of said section, and of the entire act, as amended as aforesaid, being then and there a matter of doubt in the mind of said W. L. McGaughey, as such Commissioner aforesaid, with respect to the subjects mentioned in said questions, and in each of them, and it being then and there the duty of said W. L. McGaughey, under the law, and especially under the act aforesaid, to call upon the Attorney General for his advice with respect to the meaning of said section aforesaid, and of said act, and the said W. L. McGaughey did, as aforesaid, wilfully, illegally, negligently, and obstinately refuse to call upon the said Attorney General for his advice, as aforesaid, and did, then and there ignorantly and willfully grossly misconstrue said section of said act in this, that he did then and there construe said sections of public free school lands to be detached and isolated from other public lands under said section, and in this, that he did then and there construe that said sections of land were under said sections of said act subject to sale to others than actual settlers, when in truth and in fact said sections of land were not isolated and detached from other public lands, within the meaning of said law, and when in truth and in fact said lands were not subject under the law to sale to others than actual settlers, all of which said W. L. McGaughey might then and there have known had he so called upon the said Attorney General for his advice, as aforesaid, as he was bound to do under said law, and by reason of said omission to perform his duty as aforesaid, said lands were sold in violation of the law by said W. L. McGaughey, as charged in the foregoing articles of this exhibit, to which reference is here made. And so the said W. L. McGaughey was then and there guilty of misfeasance in office in failing to perform his duty as required in said law as aforesaid.

Article 9. That W. L. McGaughey, Commissioner of the General Land Office of the State of Texas, unmindful of the duties of his office, and in violation of his oath of office, did, on the 9th day of January, 1893, up to and including the 23d day of January, 1893, in the county of Travis, in the State of Texas, as Commissioner of the General Land Office, unlawfully, knowingly, and in violation of the laws of the State regarding the sale of the public free school lands, offer for sale and sell to persons who were not then and there actual settlers on such land, the following described sections of public free school lands of the State of Texas situated in Liberty county, to-wit:

Sections 4, 6, 8, 10, 12, 14, 16, 18, 20, and 24, in the block of lands surveyed for the public free school fund in the name of the Houston and Texas Central Railway Company, and sections 16, 30, 32, 34, and 36, in the block of lands surveyed in the name of the Texas and New Orleans Railway Company, and a tract surveyed for the public free school fund in the name of Thomas K. Wheeler, which said sections of public free school lands were not then and there under the law subject to sale to others than actual settlers, as W. L. McGaughey then and there well knew, but were reserved for sale to actual settlers only. And the said W. L. McGaughey was then and there as aforesaid guilty of misconduct in office and of a willful and palpable violation of the laws of the State of Texas.

Article 10. That said W. L. McGaughey, Commissioner of the General Land Office of the State of Texas, unmindful of the duties of his office, and in violation of his oath of office, did on the 9th day of January, 1893, up to and including the 23d day of January, 1893, in the county of Travis and State of Texas, as such Commissioner of the General Land Office, unlawfully and in violation of the statutes of the State regulating the free school lands of the State, did offer for sale as sections of the public free school lands detached and isolated from other public lands, and did sell the same to others than actual settlers thereon, the following sections of public free school lands situated in Liberty county, Texas, to-wit:

Sections 4, 6, 8, 10, 12, 14, 16, 18, 20, and 24, in the block of land surveyed for the public free school fund in the name of the Houston and Texas Central Railway Company; sections, 16, 30, 32, 34, and 36, in the block of land surveyed in the name of the Texas and New Orleans Railway Company; and a tract surveyed for the public free school fund in the name of Thos. K. Wheeler; which said lands were not then and there isolated from other public lands, within the meaning of the law, and were not then and there subject to sale to others than actual settlers, but were reserved by law for sale to actual settlers only, all of which was then and there well known to W. L. McGaughey, said Land Commissioner as aforesaid; and said W. L. McGaughey was then and there as aforesaid guilty of misconduct in his office, and of a gross violation of chapter 99 of the act of the Twentieth Legislature of the State of Texas, as amended by chapter 56 of the acts of the Twenty-first Legislature of the State of Texas, relating to lease and sale of the public free school lands of the State.

Article 11. That W. L. McGaughey, Commissioner of the General Land Office of the State of Texas, unmindful of the duties of his office, and in violation of his oath of office, did on the dates hereinafter mentioned, in the county of Travis, State of Texas, as such Commissioner of the General Land Office, unlawfully and in violation of the laws regulating the sale of the public free school lands of the State of Texas, willfully and knowingly offer for sale, and sold to persons who were not then and there actual settlers on such lands, certain sections of public free school lands situated in Liberty county, Texas, which were not then and there under the law subject to sale to others than actual settlers, but were reserved for sale to actual settlers only, all of which was then and there known to said W. L. McGaughey, Commissioner of the General Land Office, as aforesaid, said certain sections so offered for sale and sold, and the dates of the sale and the names of the purchasers of the respective sections are as follows, to-wit: Certain sections in the block of surveys in the name of the Houston and Texas Central Railway company, to-wit.:

No. of sec.	Name of purchaser.	Date of sale.
16.....	D. Boaz	Jan. 20, 1893
4.....	E. Friedenhouse	Jan. 23, 1893
8.....	E. Friedenhouse	Jan. 23, 1893
10.....	E. Friedenhouse	Jan. 23, 1893
14.....	E. Friedenhouse	Jan. 23, 1893
6.....	D. Adriance.....	Jan. 30, 1893
E. $\frac{1}{2}$ 12	W. F. Simmons.....	Jan. 19, 1893

No. of sec.	Name of purchaser.	Date of sale.
W. $\frac{1}{2}$ 12.....	F. M. Carrol.....	Jan. 23, 1893
24.....	F. M. Carrol.....	Jan. 23, 1893
18.....	J. H. Collett.....	Jan. 26, 1893
20.....	J. H. Collett.....	Jan. 26, 1893

And certain surveys in block of lands surveyed in the name of the Texas and New Orleans Railway Company for said free school fund, to-wit:

No. of sec.	Name of purchaser.	Date of sale.
16.....	A. Schwartz.....	Jan. 11, 1893
30.....	A. Schwartz.....	Jan. 11, 1893
32.....	P. J. Lawless.....	Jan. 16, 1893
34.....	P. J. Lawless.....	Jan. 16, 1893
36.....	J. H. Carter.....	Jan. 18, 1893

And a survey in the name of Thomas K. Wheeler, and a survey in the name of T. P. Drake, and a survey in the name of D. E. Neville, sold to Henry P. Haldeman on January 9, 1893.

And said purchasers were not then and there actual settlers on said sections sold to them respectively, as said W. L. McGaughey then and there well knew.

Article 12. That said W. L. McGaughey, Commissioner of the General Land Office of the State of Texas, unmindful of the duties of his office, and in violation of his oath of office, did on the several dates hereinafter mentioned, in the county of Travis, and in the State of Texas, as such Commissioner of the General Land Office, unlawfully, knowingly and in violation of the laws of the State regulating the sale of the public free school lands of the State, erroneously offer for sale as sections of public free school land isolated and detached from other public lands, and did sell the same to others than actual settlers thereon, certain sections of public free school land situated in Liberty county, Texas, which were not then and there under the law isolated and detached from other public lands, and were not subject to sale to others than actual settlers, but were then and there reserved by law for sale to actual settlers only, all of which was then and there well known to said W. L. McGaughey, Commissioner of the General Land Office aforesaid.

Said several sections of land so offered for sale and sold as aforesaid, and the dates of the sales and the names of the purchasers of the several sections are as follows, to-wit:

Certain sections in the block of surveys in the name of the Houston and Texas Central Railway Company to-wit:

No. of sec.	Name of purchaser.	Date of sale.
16.....	D. Boaz.....	Jan. 20, 1893
4.....	E. Friedenhouse.....	Jan. 23, 1893
8.....	E. Friedenhouse.....	Jan. 23, 1893
10.....	E. Friedenhouse.....	Jan. 23, 1893
14.....	E. Friedenhouse.....	Jan. 23, 1893
6.....	D. Adriance.....	Jan. 30, 1893
E. $\frac{1}{2}$ 12.....	W. F. Simmons.....	Jan. 19, 1893
W. $\frac{1}{2}$ 12.....	F. M. Carrol.....	Jan. 23, 1893
24.....	F. M. Carrol.....	Jan. 23, 1893

No. of sec.	Name of purchaser.	Date of sale.
18.....	J. H. Collett.....	Jan. 26, 1893
20.....	J. H. Collett.....	Jan. 26, 1893

And certain surveys in blocks of land surveyed in the name of the Texas and New Orleans Railway Company for said free school fund, to-wit:

No. of sec.	Name of purchaser.	Date of sale.
16.....	A. Schwartz.....	Jan. 11, 1893
30.....	A. Schwartz.....	Jan. 11, 1893
32.....	P. J. Lawless.....	Jan. 16, 1893
34.....	P. J. Lawless.....	Jan. 16, 1893
36.....	J. H. Carter.....	Jan. 18, 1893

And a survey in the name of Thomas K. Wheeler, and a survey in the name of T. P. Drake, and a survey in the name of D. E. Neville, sold to Henry P. Haldeman on the 9th day of January, 1893.

And said purchasers were not then and there actual settlers on said sections sold to them respectively, as said W. L. McGaughey then and there well knew.

Article 13. That W. L. McGaughey, Commissioner of the General Land Office of the State of Texas, unmindful of the duties of his office, and in violation of his oath of office, did, on the 9th day of January, 1893, and up to and including the 23d day of January, 1893, in the county of Travis, and State of Texas, as Commissioner of the General Land Office, unlawfully, and knowingly, and by gross negligence, offer for sale and sell at the price of \$2 per acre said sections of public free school lands situated in Liberty county and described in articles 9 to 12 inclusive, which descriptions are here referred to and made a part hereof, which said price was greatly below the worth of said lands, the said sections each being then and there worth the sum of \$5 per acre, as said W. L. McGaughey then and there well knew.

Article 14. That said W. L. McGaughey, Commissioner of the General Land Office of the State of Texas, unmindful of the duties of his office, and in violation of his oath of office, did, on the 9th day of January, 1893, and up to and including the 23d day of January, 1893, unlawfully and knowingly offer for sale and sell as sections isolated and detached from other public lands, the following sections of public free school lands situated in Liberty county, Texas, to-wit:

Sections 4, 6, 8, 10, 12, 14, 16, 18, 20, and 24, in the block of lands surveyed for the public free school fund in the name of the Houston and Texas Central Railway Company, and sections 16, 30, 32, 34, and 36, in the blocks of land surveyed in the name of the Texas and New Orleans Railway company, and a tract surveyed for the public free school fund in the name of Thomas K. Wheeler, which said sections of the public free school lands were not then and there under the law subject to sale to others than actual settlers, as W. L. McGaughey then and there well knew, but were reserved for sale to actual settlers only. And the said W. L. McGaughey was then and there as aforesaid, guilty of misconduct in office, and of a willful and palpable violation of the laws of the State of Texas.

Article 15. That W. L. McGaughey, Commissioner of the General

Land Office of the State of Texas, unmindful of the high duties of his office, and in violation of his oath of office, in the county of Travis, State of Texas, did, on the 9th day of January, 1893, unlawfully and corruptly collude with David Boaz, E. Friedenhaus, and others for the unlawful purpose of enabling and permitting said persons aforesaid to purchase the said sections of public free school lands in Liberty county, described in the foregoing articles in this exhibit, to which reference for description is here made, in violation of the spirit and the intent of the law, at greatly less than their value, and to give them unfair advantage over the citizens of the State, and especially over the citizens residing in the vicinity of said lands, and did then and there in furtherance of said unlawful purpose aforesaid, price said lands to said persons as detached and isolated from other public lands, when in truth and in fact the same were not so detached and isolated, as said W. L. McGaughey then and there well knew; and did then and there, without first giving the notice to the county clerk of Liberty county, as required by law, price said lands at the price of \$2 per acre, and did then and there offer the same for sale to said persons aforesaid, and did then and there immediately sell the same to said persons aforesaid at said price, when in truth and in fact same were worth the sum of \$5 per acre per section, and when in truth and in fact other parties, and especially persons residing in the vicinity of said lands who desired an opportunity to purchase the same, when the same should be offered for sale, were deprived of any opportunity to apply for the purchase thereof, as said W. L. McGaughey then and there well knew.

Article 16. That W. L. McGaughey, Commissioner of the General Land Office of the State of Texas, unmindful of the duties of his office, and in violation of his oath of office, did, on the 9th day of January, 1893, up to and including the 23d day of January, 1893, in the county of Travis, willfully, illegally, and obstinately fail and refuse to call upon the Attorney General for advice upon the question as to whether or not the sections of public free school lands situated in Liberty county and described in the foregoing articles of this exhibit, to which reference is here made, were detached and isolated from other public lands within the meaning of the law regulating the sale of school lands, and upon the question as to whether or not said sections of land aforesaid were, under the law as aforesaid subject to sale to other than actual settlers; that said questions, and each of them, then and there involving the construction to be given to section 22 of chapter 99 of the acts of the Twentieth Legislature, as amended by chapter 56 of the acts of the Twenty-first Legislature of the State of Texas, and the meaning of said section and of said entire act as amended as aforesaid being then and there a matter of doubt in the mind of W. L. McGaughey, as such Commissioner aforesaid, with respect to the subjects mentioned in said questions and in each of them, and it being then and there the duty of said W. L. McGaughey under the law, and especially under the act aforesaid, to call upon the Attorney General for his advice in respect to the meaning of said section as aforesaid, and of said act, and the said W. L. McGaughey did, as aforesaid, willfully, illegally, negligently, and obstinately refuse to call upon said Attorney General for his advice as aforesaid, and did then and there, ignorantly and willfully, grossly misconstrue said section of said act in this, that he did then and there construe said sections of public free school lands to be detached and isolated from other public lands under said sec-

tion; and in this, that he did then and there construe that said sections of land were, under said section of said act, subject to sale to others than actual settlers, when in truth and in fact said sections were not isolated and detached from other public lands within the meaning of said law, and when, in truth and in fact, said lands were not subject under the law to sale to others than actual settlers, all of which said W. L. McGaughey then and there might have known had he so called upon said Attorney General for his advice as aforesaid, as he was bound to do under said law; and by reason of said omissions to perform his duty as aforesaid, said lands were sold in violation of the law by said W. L. McGaughey, as charged in the foregoing articles of this exhibit, to which reference is here made. And so the said W. L. McGaughey was then and there guilty of misfeasance in office in failing to perform his duty as required in said law as aforesaid.

Article 17. That W. L. McGaughey, Commissioner of the General Land Office of the State of Texas, being then and there charged by law with the custody and control of the General Land Office and the books, papers and archives thereof, did then and there, on the 1st day of January, A. D. 1892, and continuously thereafter up to this time, in violation of the duties of his office and the laws of the State regulating the examination of papers and files of said office, in the county of Travis, State of Texas, knowingly, willfully and negligently permit any and all persons not employed in said office desiring so to do to examine the papers and files and archives of said General Land Office, without first having obtained his written consent, or the written consent of the chief clerk of said office so to do, and without first having obtained an order for the detail of a clerk of said office to be present and superintend such examination, and in the manner and form as aforesaid the said W. L. McGaughey as such Commissioner as aforesaid, did then and there habitually and constantly violate article 3804 of the Revised Civil Statutes of the State of Texas, governing the examination of papers, records and files of the General Land Office.

Article 18. That W. L. McGaughey, Commissioner of the General Land Office of the State of Texas, being then and there charged by law with the custody and safe keeping of the General Land Office and of the papers, records, files and other archives thereof, unmindful of the high duties of his office and in violation of his oath of office, and of the laws of the State and the rules and regulations of the General Land Office, did then and there, on the 1st day of January, A. D. 1892, and continuously up to and including the 1st day of March, A. D. 1893, in the county of Travis, State of Texas, knowingly, willfully, negligently permit persons not employes of said office to-wit, H. S. Schmidt, Williams and Warren, whose Christian names are to the House of Representatives unknown, and many other persons whose names are to the House of Representatives unknown, to remain in said office and to examine the papers and archives after office hours and after the General Land Office had been closed for the day, and without having first obtained the written consent of himself and of the chief clerk of said office so to do, and without first having obtained an order for the detail of a clerk to be present and superintend the examination, and without having any clerk in said office present to superintend such examination, and did then and there as aforesaid permit such persons as aforesaid to have full and unrestricted access to the papers,

files and other archives of said office, all of which was contrary to the laws of the State, and in gross violation of the duties of his office.

Article 19. That said W. L. McGaughey, Commissioner of the General Land Office of the State of Texas, unmindful of his duties as such Commissioner, did, on or about the 10th day of October, 1891, in the county of Travis in the State of Texas, violate the laws of the State of Texas and his oath of office, in this: That on or about the 25th day of August, 1888, one Joseph Funk applied to the Commissioner of the General Land Office for the lease of certain public free school lands situated in the counties, as now constituted, of Tom Green and Irion, as follows:

In the county of Tom Green sections Nos. 74, 90, and 108, certificate Nos. 41-4158, 41-5096, and 41-5105 respectively, original grantee Houston and Texas Central Railroad Company.

In the county of Irion sections Nos. 58 and 70, certificates Nos. 41-5080 and 41-5086 respectively, original grantee Houston and Texas Central Railroad Company.

That on or about the 4th day of September, 1888, the said lands were duly and legally awarded to him for a period of three years; that said Joseph Funk complied with all the requirements of the law and said lease remained in full force and effect until, to-wit, the 4th day of September, A. D. 1891, and that at the termination of said lease the said lands as herein described were then and there subject to further lease; and the said Joseph Funk, prior to the termination of said lease, to-wit, on the 24th day of July, 1891, made out in due and legal form an application to lease for himself for another term the lands hereinbefore described, and the said application was duly received and filed in said Land Office on, to-wit, the 27th day of July, 1891, and the said W. L. McGaughey, in disregard of the rights of said Joseph Funk under the law to have the refusal of the lease of said lands herein described, which he, the said Joseph Funk, had theretofore been leasing, and with full knowledge of all the facts as herein charged, did willfully and unlawfully fail and refuse to execute to the said Joseph Funk a lease of the said lands herein described, whereby the said W. L. McGaughey was then and there guilty of gross misconduct in office, and of a willful and palpable violation of the laws of the State of Texas.

Article 20. That said W. L. McGaughey, Commissioner of the General Land Office of the State of Texas, unmindful of the duties of his office and of his oath of office, did on or about the 10th day of October, 1891, in the county of Travis and State of Texas, as Commissioner of the General Land Office, willfully and in violation of the laws of the State of Texas relating to the sale and lease of the public free school lands, make and execute to one Charles Schauer a lease to certain public free school lands situated in the counties of Tom Green and Irion, as follows:

In the county of Tom Green: Sections Nos. 74, 90, and 108, certificates Nos. 41-4158, 41-5096, and 41-5105, respectively, original grantee Houston and Texas Central Railroad Company.

In the county of Irion: Sections Nos. 58 and 70, certificates Nos. 41-5080 and 41-5086, respectively, original grantee Houston and Texas Central Railroad Company.

When said lands, as above described, at the time the application of the said Charles Schauer for the lease thereof was made, were held by one Joseph Funk, under lease No. 1170, said lease beginning on or about the

4th day of September, 1888, and continuing in full force and effect until about the 4th day of September, 1891, and when in fact the said Joseph Funk, the said lands as herein described being subject to further lease, before the expiration of his former lease, as above referred to, and before the application of the said Charles Schauer was made for the lease thereof, had filed with the said W. L. McGaughey an application to again lease said lands, and when under the law the said Joseph Funk was then and there entitled to have said lease contract for said lands awarded to him, and when under the law the said Charles Schauer was not then and there entitled to have said contract awarded to him, the said Charles Schauer, and the said W. L. McGaughey then and there had full knowledge of all the facts as herein charged, and the said W. L. McGaughey was then and there guilty of gross misconduct in office, and a willful and palpable violation of the laws of the State of Texas.

Article 21. That said W. L. McGaughey, Commissioner of the General Land Office of the State of Texas, unmindful of the duties of the office and of his oath of office, and in gross violation of the regulations of the said Land Office, and of the laws of the State of Texas relating to the lease and sale of the public free school lands, did, in the county of Travis and State of Texas, on, to-wit, the 1st day of November, A. D. 1892, and on divers days thereafter, up to and including the 10th day of January, 1893, unlawfully and improperly cancel the valuation theretofore lawfully placed upon the timber upon certain public free school lands, to-wit, the timber upon

Sec. No.	Certificate No.	Original grantee.
10.....	905.....	H. & T. C. Ry. Co.
12.....	911.....	H. & T. C. Ry. Co.
36.....	25-1303.....	H. & T. C. Ry. Co.

All of said lands being situated in Newton county, Texas, and did then and there improperly, and in violation of the laws of the State, reprice and revalue the timber growing upon said lands upon the statement and representation, and at the instance and request of one E. I. Kellie, who was not then and there an agent the State of Texas, but he, the said E. I. Kellie, was then and there in the service and employ of parties other than the State of Texas, all of which the said W. L. McGaughey then and there well knew, whereby the said W. L. McGaughey was guilty of gross misconduct in office, and of a willful and palpable violation of the laws of the State of Texas.

Article 22. That said W. L. McGaughey, Commissioner of the General Land Office of the State of Texas, unmindful of the duties of his office and of his oath of office, and in gross violation of the regulations of the said Land Office and of the laws of the State of Texas relating to the sale and lease of the public free school lands, did, in the county of Travis and State of Texas, on, to-wit, the 20th day of January, 1893, and on divers days thereafter, up to and including the 20th day of March, 1893, unlawfully and improperly cancel the valuation theretofore lawfully placed upon the timber upon certain public free school lands, to-wit, the timber upon

Section.	Certificate No.	Original grantee.
50.....	545.....	H. & T. C. Ry. Co.
52.....	546.....	H. & T. C. Ry. Co.

Section.	Certificate No.	Original grantee.
66.....	829.....	H. & T. C. Ry. Co.
68.....	830.....	H. & T. C. Ry. Co.
118.....	25-1220.....	H. & T. C. Ry. Co.

All of said lands being situated in Jasper county, Texas, and did then and there improperly and in violation of the laws of the State, reprice and revalue the timber growing upon said lands, upon the statement and representation and at the instance and request of one E. L. Kellie, who was not then and there an agent of the State of Texas, but he, the said E. I. Kellie, was then and there acting in the service and employ of persons other than the State of Texas, all of which the said W. L. McGaughey then and there well knew, whereby the said W. L. McGaughey was then and there guilty of gross misconduct in office, and of a willful and palable violation of the laws of the State of Texas.

Article 23. That the said W. L. McGaughey, Commissioner of the General Land Office, did, in Travis county, Texas, on or about the 1st day of July, 1891, make a false memorandum and instrument in writing, and file the same in the General Land Office of the State of Texas on or about said last date, said memorandum and instrument in words and figures substantially as follows, to-wit: "Paid till October 15, 1891." That said writing purported to be a memorandum reciting the purported fact that in the matter of certain public lands of the State of Texas that had been leased to B. H. & J. W. Snyder, that the lease price due the State of Texas had been paid till October 15, 1891, when in truth and fact the lease price had not been paid till October 15, 1891, but only to about the date of July 16, 1890; and the said W. L. McGaughey knew that said lease price had not been paid on said land till October 15, 1891, but disregarding the duties of his office, and in violation of the laws of the State of Texas, with intent to defraud the State of Texas out of money due for the lease of said land, he did, as aforesaid, make said false memorandum and instrument in writing and file the same in the General Land Office of the State of Texas, and permit the same to remain on file in the General Land Office.

Whereby, in view of the premises, the House of Representatives of the State of Texas do say and charge, that the said W. L. McGaughey, Commissioner of the General Land Office, in the manner and by the means aforesaid, and at the time aforesaid, did commit and was guilty of the high crime and misdemeanor, and malfeasance in office, and did thereby render himself unworthy, and no longer fit to exercise the duties incumbent upon the Commissioner of the General Land Office of the State of Texas.

Article 24. That the said W. L. McGaughey, Commissioner of the General Land Office of the State of Texas, unmindful of his oath of office, and in violation thereof and of the laws of the State of Texas, did permit D. H. and J. W. Snyder to retain possession of certain public free school lands after their lease on said lands had expired, and without authority of law extended the time in which the said D. H. and J. W. Snyder might pay such rental from July 16, 1890, till October 15, 1891, and permitted said D. H. and J. W. Snyder to retain possession of said lands without paying said rental, thereby defrauding the State of Texas out of said rental; whereby, in view of the premises, the House of Representatives of the

State of Texas do say, and charge, that the said W. L. McGaughey, Commissioner of the General Land Office, in the manner and by the means aforesaid, and at the time aforesaid, did commit and was guilty of a high crime and misdemeanor, and malfeasance in office, and did thereby render himself unworthy, and no longer fit to exercise the duties incumbent upon the Commissioner of the General Land Office of the State of Texas.

Article 25. That the said W. L. McGaughey, Commissioner of the General Land Office, did, in Travis county, Texas, on or about the 24th day of March, 1893, fraudulently attempt to procure from William Bramlette, chief clerk of the General Land Office, a false certificate in writing to a certain map of Liberty county, Texas, said certificate in words and figures substantially to-wit:

I, William Bramlette, chief clerk of the General Land Office, hereby certify that the sections marked "blue" on this map were, when sold, detached and isolated from other unappropriated public lands.

Given under my hand and seal of the General Land Office of the State of Texas, March 24, 1893.

That said map referred to in said certificate was a map of Liberty county, Texas, and the sections referred to in said certificate as marked "blue" were not detached and isolated from other unappropriated public lands, and the said W. L. McGaughey well knew that said sections were not detached and isolated, as stated in said certificate as shown on said map, but the said W. L. McGaughey did then and there as aforesaid falsely pretend to and attempt to fraudulently induce the said William Bramlette to sign said certificate, and the said W. L. McGaughey did then and there know that said certificate was a false certificate at the time and in the manner aforesaid.

Whereby, in view of the premises, the House of Representatives of the State of Texas do say and charge the said W. L. McGaughey, Commissioner of the General Land Office, in the manner and by the means aforesaid, and at the time aforesaid, did commit and was guilty of the high crime and misdemeanor and malfeasance in office, and did hereby render himself unworthy and no longer fit to exercise the duties incumbent upon the Commissioner of the General Land Office of the State of Texas.

And the House of Representatives, by protestation, saving to themselves the liberty of exhibiting at any time hereafter any future articles or other accusations or impeachments against the said W. L. McGaughey, and also of replying to his answer which he shall make under the said articles or any of them, and of offering proof to all and every one of the aforesaid articles, and to all and every other article, impeachment, or accusation which shall be exhibited by them or the case shall require, to demand that the said W. L. McGaughey may be put to answer said crimes and misdemeanors, and that such proceedings, examination, trials, and judgment thereupon had and given as are agreeable to law and justice.

RULES OF THE SENATE SITTING AS A HIGH COURT OF IMPEACHMENT.

The committee appointed by the President of the Senate, sitting as a court of impeachment, to prepare and submit rules for the government of the High Court of Impeachment, do most respectfully submit the following:

A writ of summons shall be issued to the accused, reciting the articles of impeachment, and notifying him to appear before the Senate at a day and place to be fixed by the Senate, which writ shall be substantially in the following form:

The State of Texas to W. L. McGaughey, Greeting:

Whereas, The House of Representatives of the State of Texas did on the 17th day of April, A. D. 1893, exhibit to the Senate articles of impeachment against you, the said W. L. McGaughey, in words following (here insert the articles), and did demand that you, the said W. L. McGaughey, should be put to answer the accusations as set forth in said articles, and that such proceedings, examinations, trials, and judgments might be thereupon had as are agreeable to law and justice, you, the said W. L. McGaughey, are therefore hereby summoned to be and appear before the Senate of the State of Texas, sitting as a court of impeachment, at their chamber in Austin, on the — day of —, 1893, then and there to answer to the said articles of impeachment, and then and there of abide by, obey, and perform such orders and judgments as the Senate to the State of Texas, sitting as aforesaid, shall make in the premises, according to the Constitution and laws of the State of Texas. Herein fail not.

Witness, —, Lieutenant Governor of the State of Texas, and President of the Senate thereof, and of the Court of Impeachment, at Austin, this — day of —, 1893.

Attest: —, Secretary.

Which summons shall be signed by the presiding officer and attested by the secretary of said court, and shall be served by the sergeant-at-arms of the court of impeachment, or by such other person as the said court may specially appoint for that purpose, who shall serve the same pursuant to the directions given in the form next following:

2. A precept shall be endorsed on said writ of summons substantially in the following form:

The State of Texas.

The State of Texas to C. H. Allen, Greeting:

You are hereby commanded to deliver and leave with W. L. McGaughey, if to be found, a true and attested copy of the within writ of summons, together with a copy of this precept, showing him both, or in case he can not with convenience be found, you are to leave true and attested copies of said summons and precept at his usual place of residence, and whichever way you perform the service let it be done at least — days before the appearance day mentioned in said writ or summons. Herein fail not, and make return of this writ of summons and precept, with your proceedings thereon endorsed, on or before the appearance day mentioned in said writ or summons.

Witness, —, Lieutenant Governor of the State of Texas and President of the Senate thereof and of said Court of Impeachment.

Attest: —

—, Secretary.

Which precept shall be signed by the presiding officer and attested by the secretary of said court.

Subpoenas shall be issued by the secretary of said court upon the appli-

cation of the managers of the impeachment or of the party impeached, or of his counsel, returnable at such time as may be fixed in said subpoena. Such subpoena shall be substantially in the following form:

The State of Texas.

The State of Texas to _____, Greeting:

You and each of you are hereby commanded to appear before the Senate of the State of Texas, sitting as a court of impeachment, on _____ day of _____, 1893, at the Senate chamber in the city of Austin, then and there to testify your knowledge in the cause which is before the court, in which the House of Representatives have impeached W. L. McGaughey. Herein fail not.

Witness, _____ Lieutenant Governor of the State of Texas and the President of the Senate thereof and of the Court of Impeachment, at the city of Austin, this _____ day of _____, A. D. 1893.

Attest:

_____, Secretary.

The form of direction for the service of the subpoenas shall be as follows:

To the Sergeant-at-Arms of the Court of Impeachment or any of his Assistants:

You are hereby commanded to serve and return the within subpoena according to law. Dated at the city of Austin, this _____ day of _____, A. D. 1893.

_____,
Secretary of Said Court.

Your committee further recommend that Thursday, April 20, at 10 o'clock a. m., be fixed as the date for the respondent to make answer to the charges of impeachment. Your committee further recommend that the Secretary of the Senate be instructed to inform the Governor of Texas that the House of Representatives, through its managers, on April 17, 1893, has filed with the Senate articles of impeachment in the name of the State of Texas, against W. L. McGaughey. We further recommend that the Sergeant-at-Arms and Assistant Sergeant-at-Arms of the Senate be sworn in as the Sergeant-at-Arms and Assistant Sergeant-at-Arms of the said court, and that the Secretary and Assistant Secretary of the Senate and R. W. Holbrook be sworn in as clerks and assistant of the said court of impeachment.

Your committee will make further report from time to time.

LEWIS,
CRANFORD,
McCOMB.

Resolved, 1. That at 10 o'clock a. m. on this, the 20th day of April, 1893, the Senate do resolve itself into a court of impeachment for the purpose of receiving the appearance or answer, or both, of the Hon. W. L. McGaughey, Commissioner of the General Land Office of the State of Texas, against whom articles of impeachment have been preferred.

2. At the hour last above named, the said W. L. McGaughey may, in person or by counsel, or both, appear in said court and file answer to the said articles of impeachment against him; and the manner of his appearance shall be fully recorded by the secretary of the court of impeachment.

3. If the respondent shall fail to appear, after having been served, etc., or appearing, shall fail to file his answer to such articles of impeachment, the said trial shall proceed nevertheless as upon a plea of not guilty.

4. The respondent and his counsel and the managers appointed by the House, shall be conducted to seats, by the sergeant-at-arms, near the president's chair, when their appearance shall have been announced by the doorkeeper.

5. If the respondent appear and announce not ready to file his answer, and shall ask further time so to do, the question shall be put to the court on motion of some member thereof, and determined by a majority vote of said court. If he shall appear and file his answer, then the court shall adjourn until 3 o'clock this afternoon, at which time the special committee on procedure shall report a rule fixing the time that the managers on the part of the House of Representatives shall file their replication, fixing a day to hear demurrers and to appoint a time when the trial of said W. L. McGaughey shall begin.

CRANFORD, for Committee.

RULES OF PROCEDURE AND PRACTICE IN THE TRIAL OF W. L. M'GAUGHEY,
COMMISSIONER, ETC.

Rule 1. The Senate, having resolved itself into a high court of impeachment, and the managers on the part of the House of Representatives and the respondent having both announced ready for trial, shall proceed to the consideration of the articles of impeachment, and shall continue in session from day to day (Sundays excepted) after the trial shall commence, unless otherwise ordered by the Senate, until final judgment shall be rendered, and so much longer as may, in its judgment, be needful.

Rule 2. The presiding officer shall have power to make and issue, by himself or the Secretary of the Senate, all orders, mandates, writs, process and precepts authorized by these rules or by the Senate, and to make and enforce such regulations and orders in the premises as the Senate may authorize or provide.

Rule 3. The Senate shall have power to compel the attendance of witnesses, to enforce obedience to its orders, mandates, writs, process, precepts and judgments, to preserve order, and to punish in a summary way contempt of and disobedience to its authority, orders, mandates, writs, process, precepts and judgments, and to make all lawful orders, rules and regulations which it may deem essential or conducive to the ends of justice, and to this end may, in the first instance, upon the application of either party, cause attachments to be issued for witness to any court within this State. And the sergeant-at-arms, under the direction of the Senate, or the presiding officer thereof, may employ such aid and assistance as may be necessary to enforce, execute and carry into effect the lawful orders, mandates, writs, process and precepts of the Senate.

Rule 4. The presiding officer of the Senate shall direct all necessary preparations in the Senate chamber, and the presiding officer, on the trial, shall direct all the forms of proceedings, and all forms during the trial not otherwise provided for.

Rule 5. The presiding officer, on the trial, may rule on all questions of evidence, and incidental questions, observing the established rules of evidence in this State, as near as applicable, which ruling shall stand as

the judgment of the court, unless some member thereof shall ask that a formal vote be taken thereon, in which case it shall be submitted to the court for decision; or he may, at his option, in the first instance, submit any such question to a vote of the court. Upon all such questions the vote shall be without a division, unless the yeas and nays be demanded by three members of the court, when the same shall be taken.

Rule 6. Counsel for the respondent, and the managers upon the part of the House shall be admitted to appear and be heard upon the questions arising upon the trial of said cause: *Provided*, that all preliminary or interlocutory questions, and all motions, shall be argued for not exceeding thirty minutes on each side, unless the court shall, by order, extend the time.

Rule 7. All motions made by the parties or their counsel shall be addressed to the presiding officer, and if he or any Senator shall require it, they shall be committed to writing, and read at the secretary's desk.

Rule 8. Witnesses shall be examined by one person on behalf of the party producing them, and then cross examined by one person on the other side, and the party producing the witness may again examine him upon a new matter drawn out by the other party.

Rule 9. If a Senator is called as a witness, he shall be sworn and give his testimony standing in his place.

Rule 10. If a Senator wishes to ask a question to be put to a witness, or to offer any motion or order (except to adjourn), it shall be reduced to writing and put by the presiding officer.

Rule 11. At all times while the Senate is sitting upon the trial the doors of the Senate shall be kept open, unless the court shall direct the doors to be closed while deliberating upon the decisions.

Rule 12. All demurrers, exceptions, etc., shall first be heard and disposed of, and shall be decided and determined by a majority of the members of the court present.

Rule 13. The party presenting the demurrers and exceptions shall be entitled to open and conclude the argument thereon, and not more than three persons [amended so as to read five] on each side shall make arguments (unless otherwise ordered by the Senate), and not more than three [amended so as to read six] hours shall be consumed by each side in such argument.

Rule 14. After such demurrers shall have been presented and argued the court shall, after due deliberation and consultation, announce its decisions upon each and every demurrer and exception, and such questions and issues as shall be thereby eliminated shall not thereafter be considered in the trial.

Rule 15. If, after decisions upon demurrers and exceptions presented, there shall remain any issues to be tried, the trial shall proceed at once upon its merits, the burden of proof being upon the managers of the House of Representatives, who shall hold the affirmation and be entitled to open and conclude the testimony and argument in the case.

Rule 16. All the orders and decisions shall be made and had by yeas and nays, which shall be entered on the records, and without debate, subject, however, to the operation of rule 5, except when the doors shall be closed for deliberation (or the court shall retire to its consultation room as the case may be), and in that case no member shall speak more than once on one question, and for not more than ten minutes on an in-

terlocutory question, and for not more than fifteen minutes on the final question, unless by consent of the Senate, to be had without debate; but a motion to adjourn may be decided without the yeas and nays, unless they be demanded by three members. The fifteen minutes herein allowed shall be for the whole deliberation on the final question, and not to the final question on each article of impeachment.

Rule 17. The court may at any time, upon motion, without division and without debate, retire to its consultation room for deliberation, and shall, after such deliberation, return to the Senate chamber and announce its decision.

Rule 18. On the final question, whether the impeachment is sustained, the yeas and nays shall be taken on each article of impeachment separately; and if the impeachment shall not upon any of the articles presented be sustained by the votes of two-thirds of the members present, a judgment of acquittal shall be entered; but if the person accused in such articles of impeachment shall be convicted upon any of said articles by the votes of two-thirds of the members present, the court shall proceed to pronounce judgment, and certified copy of such judgment shall be deposited in the office of the Secretary of State.

Rule 19. If the Senate shall at any time fail to sit for the consideration of articles of impeachment, on the day or hour fixed therefor, the Senate may, by an order to be adopted without debate, fix a day and hour for resuming such consideration.

Rule 20. When any question shall arise, and there shall be no sufficient rule prescribed herein, the rules and precedents in other cases of impeachment shall constitute the rule in this case.

HIGH COURT OF IMPEACHMENT.

10 o'clock, a. m., April 20, 1893.

Court convened pursuant to resolution adopted, Lieutenant Governor Crane presiding.

Quorum present.

The House Committee appointed to conduct the prosecution was announced and seated, as per resolution adopted this morning.

Senators Douglass and Woods approached the President's stand (they being absent when the other senators were sworn) and took the following oath:

"Do you solemnly swear that in all things appertaining to the trial of the impeachment of W. L. McGaughey, Commissioner of the General Land Office of the State of Texas, you will do impartial justice according to the law, so help you God."

Also, Assistant Secretary Wortham took the following oath: Do you solemnly swear that you will faithfully perform all the duties of secretary of the court of impeachment formed to try the proceedings pending against W. L. McGaughey, Land Commissioner, so help you God.

Senator Imboden moved that a committee of three be appointed to notify Hon. W. L. McGaughey that the High Court of Impeachment was now in session.

Carried.

The chair appointed Senators Imboden, Boren, and Lawhon.

Hon. W. L. McGaughey and his counsel, to-wit, W. M. Walton, Henry W. Lightfoot, J. J. Faulk, and J. H. Henderson, were announced in court.

At the suggestion of Senator Cranford, the resolution adopted by the Senate this morning (providing for receiving the appearance or answer) was read in the presence of the prosecution and defense.

The respondent, Hon. W. L. McGaughey, through his counsel, filed demurrer and answer to the articles of impeachment, and the same was read, as follows:

DEMURRER AND ANSWER OF RESPONDENT.

The State of Texas v. W. L. McGaughey.—In the Senate of the Twenty-third Legislature of the State of Texas, sitting as a high court of impeachment.

And now comes defendant, W. L. McGaughey, in his own proper person, and demurs generally:

First. To the jurisdiction and power of this high court of impeachment under the Constitution and laws of the State of Texas to receive articles of impeachment against him; to cause him to appear before it and demur, plead, or answer to said articles of impeachment, or to any one or more of them, or to put him on trial, or to try him, or to render, or enter, or record any judgment against him, because he says that sections 1 and 2, article 15, of the Constitution, as do the laws of the State of Texas, fail to define any crimes or offenses for which an impeachment will lie; that said sections and article of the Constitution are not self-executing, but require legislation to put said sections of said article into operation.

Second. He demurs to the several, each, and all of the articles of impeachment presented against him in these impeachment proceedings, because there is not contained in them, nor in any of them, any impeachable matter under the Constitution and laws of the State of Texas; and because there is no treason, on bribery, no high crimes, and no misdemeanor therein alleged against him that are impeachable under the Constitution and laws of the State of Texas; and because there is no matter or thing therein alleged against him evidencing corruption on his part in the administration of the business of the General Land Office of the State of Texas, and manifesting no act on his part, mala in se nor mala prohibita, that subjects him to impeachment under the Constitution and laws of the State of Texas; and of this he prays the judgment of the high court of impeachment.

[Signed]

W. L. MCGAUGHEY,
In Propria Persona.

And for special demurrer and exception to the several articles of impeachment, seriatem, he, the defendant, presents the following:

To articles 1 and 2:

1. That they contain no impeachable matter or facts, nor charge any corruption or willful wrong.

2. They allege matters transpiring prior to the commencement of defendant's time of office, which, under the Constitution and laws of Texas, can not be matters on which to base an impeachment of him and his removal from office.

To article 3:

1. The same as to articles 1 and 2 as above.

2. Because it affirmatively appears on the face of said article 3 that the alleged sale to C. D. Dillon of sections of lands 16, section 24, section 34, section 84, in block No. 2, Houston and Texas Central Railroad, Harris county, Texas, were made on the 14th of October, 1892, which was a day and time prior to the commencement of defendant's present term of office, and so far as said sales are concerned, they constitute no grounds for his impeachment and removal from the office he now holds.

To article 4:

1. The same as to article 3.

2. And because the sale of lands to C. D. Dillon, sections 16, 24, 34, and 84, block 2, Houston and Texas Central Railroad Company, Harris county, and the sale of section 18 to J. I. Dillon, and section 64 to I. C. Stafford, and section 82 to P. M. Cuney, all in same block of land, are affirmatively alleged to have been made not later than the 23d day of October, 1892, which was a day and time prior to the commencement of defendant's present term of office, and affords, under the Constitution and laws of the State of Texas, no grounds for his impeachment nor for his removal from the office he now holds after election thereto subsequent to the happening of the matters, things, acts, and facts alleged against him in said article 4.

To articles 5 and 6:

1. For all reasons stated to articles 1, 2, 3 and 4.

To article 7:

It contains no impeachable matter, especially when taken in connection with articles 1, 2, 3, 4, 5 and 6.

To article 8:

1. It contains no impeachable matter. The calling on the Attorney General for his opinion is a privilege and not a duty.

2. The said article 3 affirmatively alleges that the true construction of the law was matter of doubt to the defendant. In such case it is his duty to construe the law to the best of his ability, fairly, honestly and conscientiously under his oath of office.

To articles 9, 10, 11, 12, 13 and 14:

1. No impeachable matter alleged, no willful wrong charged, no corruption averred.

2. All that is alleged amounts to an erroneous construction of the law, with no evil, corrupt or personally advantageous object or purpose in view, inducive to make the erroneous construction.

To article 15:

1. Contains no impeachable matter under the Constitution and laws of the State of Texas.

To article 16:

The same as applies to article 8.

To articles 17, 18, 19, 20, 23 and 24:

1. Alleges no impeachable matter.

2. Contains general allegation of matters and things, acts and facts antedating the commencement of defendant's present term of office, and to that extent affords no matter for his impeachment and removal from the office he now holds, the term of which commenced on the 8th day of November, 1892.

3. All such acts antedating his re-election were condoned by such re-

election, and now afford no cause for his impeachment and removal from the office he is now holding.

To articles 21 and 22:

1. Contains no impeachable matter.
2. If he, defendant, believed it to be in the public interest to have the re-valuation made, charged against him, it was in his reasonable discretion to have it done.
3. No corruption, no mala fides, no acts mala in se nor mala in prohibita, are averred in the articles.

Article 25:

1. No impeachable matter alleged.
2. No corruption, no mala fides, no acts mala in se nor mala in prohibita are alleged.
3. It is not averred how the false certificate was intended to be used, or could have been used to the prejudice, harm, or hurt of the State of Texas, or the people or any of the people of the State of Texas.

Of all this, and all demurrers and exceptions, general and special, defendant prays the judgment of this High Court of Impeachment.

(Signed)

W. L. MCGAUGHEY,
In propria persona.

FAULK,
HENDERSON,
LIGHTFOOT,
WALTON,
Of counsel.

The State of Texas v. W. L. McGaughey.—In the Senate of the Twenty-third Legislature, sitting as a High Court of Impeachment.

And now comes the defendant and for answer says:

In the matter of the charges presented by the House of Representatives of Texas to the Senate thereof, containing articles of impeachment of W. L. McGaughey, Commissioner of the General Land Office.

The respondent, W. L. McGaughey, now comes in his own proper person as well as by attorneys, and says, in case his general and special demurrers to the articles of impeachment or any part thereof be overruled, that he pleads not guilty to each and every charge therein contained, in the manner and form as alleged, and demands strict proof of the same; and in full reply and explanation of each and every charge therein contained which he is advised that it is material for him to answer, he states:

First. Respondent was elected by the legally qualified voters of Texas Commissioner of the General Land Office of Texas on the 8th day of November, 1892, and as such Commissioner duly qualified on the 21st day of January, 1893, by taking the constitutional oath and giving bond as required by law, and as such resumed the duties and responsibilities thereof, and this respondent prays now to answer each and every charge in said articles, beginning at article No. 1 and including article No. 16, as they all treat on the same subject.

Second. Instead of being unmindful of the duties of his office, respondent says: That when he first went into office on the 21st day of January, 1891, he found all of the sections of land mentioned in said article on the market to actual settlers, under the law, at not less than two dollars per acre. That they had been on the market at said price since the act of the

Legislature approved in 1887, and classification thereunder. That during said time, up to December 14, 1892, only forty-four sections had been sold to actual settlers, and that of these about one-half of these sections had been forfeited to the State. That all of said lands were placed on the market to actual settlers under the acts of the Legislature, approved in 1874, at \$1.50 per acre, and remained on the market at said price until 1879, when they were placed at \$1 per acre by an act of the Legislature, and remained on the market at this price unsold till 1881, when by an act of the Legislature the price was raised to \$2 per acre for watered sections, and \$1 per acre for unwatered sections, and by an act of the Legislature of 1883 this character of land was raised to \$2 per acre; and under the acts of 1887 said lands were put at not less than \$2 per acre for actual settlers, and was classified by a regular State agent, appointed for that purpose, whose report is now on file in the General Land Office, verifying this statement, which he alleges to be now, and was on the 16th of December, 1892, and other dates of sales mentioned in said article, their full market value; and seeking to subserve the very best interest of the State, and the policy and intention of the law, he did sell said sections at \$2 per acre, which he was authorized to do under the law. And instead of "unlawfully, knowingly, and in violation of the laws of the State," selling said lands, he begs leave to reply to such imputations as follows:

1. He was a member of the Legislature that passed the act of 1887, and took an active part in the passage of the laws; he heard it discussed and participated therein, as well also as the laws of 1889; that he understood at the time of the passage of the law that section 22 thereof was intended to be an innovation on the long established custom of selling the land mentioned therein to actual settlers only, but that section 22 thereof authorized the sale to any person of all school, university, and asylum lands situated in any county in Texas organized prior to 1875, with three exceptions only: First, excepting the counties of El Paso, Pecos, and Presidio; second, except where it joins unappropriated land; and third, except to corporations. And believing in good faith that this was the construction that the Legislature intended should be placed upon it, and looking to the welfare and best interest of the State, he did sell said lands as aforesaid, and his acts and good faith he submits to your candid judgment and to the judgment of the people in whose name he is charged.

As persuasive to the construction he placed upon said law, he states as follows:

The caption of the act of 1887 clearly draws a distinction between free school, university and asylum land and public lands of the State. Section 20 thereof clearly draws a distinction between public free school lands, university, and asylum lands and public lands.

And respondent further says, that he was induced to believe, and still believes in good faith, that he acted within the legislative intent in making said sales under section 22 from another potent fact in this: His immediate predecessor, Hon. R. M. Hall, who was in office at the time said act of 1887 went into effect, placed upon the market under said section 22 large blocks and bodies of land belonging to said school, university, and asylum funds lying and situated in about eighty counties in the State organized prior to 1875, and said blocks and bodies were similar in bulk and size to block as described in said act, and all of said lands so put on

the market not sold are still on the market. That the validity of said sales and the action of his said predecessor have never, so far as respondent is informed, been questioned, or his good faith impugned, as an example: He placed on the market about thirty sections, containing 640 acres each, nearly all in a block, in McMullen county, and in the same way about 150 sections in Medina county, lying in blocks and not adjoining any other public lands, and the balance of the lands in said seventy-eight counties are in almost a similar condition, which he will show by proofs at the proper time. And this construction is borne out by the further fact that these three counties of El Paso, Pecos, and Presidio contained the main bulk of the public lands, viz: El Paso county 2,000,000 acres, Pecos county 17,920 acres, and Presidio county 232,240 acres, thereby showing a legislative intent and necessity, as supposed by the Legislature, to exempt the school, university, and asylum lands therein situated for sale; and having his own personal knowledge of what the Legislature intended when they passed the law, and having before him the benefit of the unquestioned acts and precedence of his predecessor, as well as the law itself, then construed altogether, he, after giving the matter mature deliberation, did construe said section 22 so as to authorize him to make the sale as "detached sections."

For nearly twenty years these lands had been on the market to actual settlers under the law; no notice was required to be given by any one who desired to settle on it, and it remained unsold, with no revenues derived from it to the school, university and asylum funds, and being reliably informed, and knowing by personal observation, that said lands were not fitted for agricultural purposes, and as such no one desired it, what other conclusion could your respondent come to than that the Legislature intended this very character of lands, situated as they are, to be placed on the market and sold as it was sold, thereby securing a great benefit to the people of Texas in the way of taxes, interest, and purchase money for same. And always mindful of his oath of office, and the weighty responsibility resting on him as a servant of the people, he sought in this instance in good faith, and for the present and future welfare of the people of Texas, to do a duty which he believed was beneficial to the people thereof. He might have been mistaken in the construction he placed upon the law, but he acted within the scope of a discretion given to him by the people and laws of the State, and he submits that his acts were for the best interest of the State, and not against the actual settlers.

There being no doubt in his mind when the sales were made as to the proper construction of section 22, there was no necessity, as he supposed, for calling on the Attorney-General for advice. Of course, as a cowardly officer, seeking to shirk responsibilities not only in this but almost in every case, he could call on the law officer of the State for advice what to do, thereby placing the responsibility of his office upon the Attorney-General, which in his opinion was never intended by the people.

If this respondent has done wrong in the sale of those lands, it was an error committed in the light of the highest precedents, and resulted in great benefits to his constituency; he is more than willing to be held responsible for the conduct of his office, and he does not seek to make his shield or armor of the Attorney-General, admitting at all times in cases of doubt his duty to call on him for advice.

He denies that said lands were sold at a price less than their value, but

avers that is within only a short time since it would bring the price for which it sold, and on this charge he will submit proof, if necessary, at the proper time.

Having determined that these lands could be sold under section 22, he was not required by law to find out who the purchasers were, where they lived, their standing, occupation, or personnel, save to know that they were not corporations; and looking to the best interest of the people, he sold to any one who would buy on the terms fixed by law, without inquiry save as above named. The notice, as required by section 6 of the acts of 1887 and 1889, was given literally by sending lists of the lands to be sold to the clerk of the county where the lands were located, and no lands were awarded or sales completed until said notice was given. As a servant of the people, he respectfully and most emphatically denies that he entered into any collusion or combination whatever with any of said purchasers. His office being public, belonging to the people and for their benefit, any one, without regard to standing or condition, can, on application, get any information he desires from the office, and your respondent seeks to serve all alike. If anything that pertains strictly to the office has been improperly communicated to the public by any employe, he knows nothing about it.

Respondent denies that he has failed to comply with the requirements of article 3806, but that in truth and in fact he has complied with said law. The rule in the office is, first, any one desiring to examine any file, or papers in the file, is required to make a written application therefor, stating whether and how he is interested in the papers, to the Commissioner or chief clerk; the Commissioner or chief clerk, as the case may be, endorses on the application an order to the file clerk to allow the party to examine the paper.

The standing positive instructions to the file clerk are as follows: Before delivering any file to any person, examine the file and ascertain the number and character of paper within the file, preserving the application or endorsements for receipt, and when the file is returned to examine critically and see that all the papers belonging to it are returned intact; which rule has been adhered to without exception, which works well and carries out the spirit and intent of the law.

And the above rule applies not only to the file clerk, but to all departments of the office.

Respondent has in the employ of the State a sworn and salaried officer, viz., David Crockett, who is the night watchman, whose duty it is to remain at and in the office all of the time after office hours. Respondent says he, as he had the legal right to do, gave his permission to N. S. Smidt and W. W. Williams to remain in the lease department and watchman's rooms of the office on several occasions after office hours. Said Williams was copying field notes for some of the recently organized counties of the State, which said counties were anxious to get the field notes as soon as possible, otherwise land sales and other business in regard to the land therein would or might have been seriously affected. Said Smidt was copying leases, in order to find out when they expired, especially those adjoining the land of J. S. Dougherty, for whom he was working, and the office hours did not afford him the time to get them out as soon as he desired.

Respondent knowing that they were honorable gentlemen, and that

they desired the information for a lawful purpose, he decided to permit both of these gentlemen to remain in the room and do their work under the surveillance of the night watchman. It is not true that they had any access whatever to the files of the office, papers or other archives thereof. No injury resulted or could reasonably have resulted therefrom. He says that under no circumstances would he have permitted them, or any one else, to remain in the office only in case they were under strict surveillance of a sworn officer of the office. As to said Warren, he knew nothing except that said Smidt asked him to allow Warren to assist in proof reading his work, to which respondent consented, but this was to be done during office hours, and he has no recollection of consenting to allow him to remain there after office hours. The positive instructions of respondent were given to the watchman not to allow any one in the office at said hours without respondent's consent. Respondent very respectfully, but most emphatically, denies the charge that the above named parties had or were permitted "to full and unrestricted access to the papers, files, and other archives of the said office," they being all in other rooms and compartments of the office, locked up, and even the night watchman did not know the combination, and had no access, and could not have any access whatever to them.

In reply to the sections of said articles regarding the lease contracts of Messrs. Funk and Schauer in Tom Green county, respondent avers the following, to-wit: That prior to September, 1891, he was well aware of conflicting interests between said Funk and said Schauer, but did not comprehend fully the merits of the case till September, 1891, when he received from Messrs. Schauer Bros. a plot showing the position of the land they owned and leased from the State on the ground, and also the position of the five sections leased by said Funk, accompanied by the affidavits of said Schauer, which will be at the proper time exhibited to your honorable body if found necessary. Long before said Funk's lease expired he and said Schauer Bros. both made application to have said five sections. As shown by the sketch, Schauer Bros. had enclosed in a square about forty sections, fourteen of which belonged to the school fund; that the enclosure was a good and substantial fence; that they owned a part of the balance of said sections, exact number not known to respondent; that they had made permanent and valuable improvements on the same, and actually lived and resided and made their homes on the land.

They have two valuable dwelling houses on different sections of said land; have dug wells and erected valuable and costly wind mills on six different sections; that said lands are all dry grazing lands, and no water on them except that furnished by said Schauer's wells. That Mr. Funk did not live on the land, and had made no kind of improvements on the same whatever, and the five sections formerly leased to him lie in different parts of said large tract of land, so that it is impossible to enclose the Schauer lands without also enclosing the sections desired by said Funk. That respondent is informed and believes that when he leased the land to Schauer, said Funk was a large stock owner and turned large herds of cattle into the Schauer pasture, and got the benefit of the water and other conveniences prepared at great expense by said Schauer, without contributing anything.

That these matters and conflicting interests were submitted to respondent on sworn statement of said Schauer Brothers on one side and the

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open statement on the other by said Funk, and respondent undertook to adjust these equities between said parties just as he has done in many other similar cases, and as it was his duty to do.

He wrote to said Funk that he would give him thirty days in which to be heard, and requested him to appear and meet the sworn statements of said Schauers or he would award the lease of said land to Schauers. The time passed and nothing was heard from said Funk till after the expiration of the time, and the lands were awarded to Schauers.

Many considerations induced respondent to award said lease to said Schauer Brothers. Prominent, among others, were the facts that the State was receiving much more money as lease from said Schauers than from said Funk; said Schauers were actual settlers on the land, and had the same enclosed and improved by building houses, digging wells, putting up wind mills on the same, and all of this was near and adjacent to other school lands, and by building substantial improvements around and also around said school land, thereby developing the country and enhancing the value of the State's land; besides, the injustice of compelling the said Schauers at their own expense to furnish stock water to said Funk.

Respondent adjusted these equities, having in view at all times the best interest of the State as well as to do justice to the citizens. All of his acts were in good faith and prompted by the purest of motives, and nothing concealed. Similar cases are continually arising, and, with the lights before respondent, he always acts, knowing full well that he will be subjected to criticism by one side or the other. Respondent further avers that after said decision he wrote to Mr. Funk that in case he thought that he was wrong to refer the matter to the courts. Respondent knew neither party then, and does not know either one of them now, and had no personal interest in the same.

To articles 21 and 22:

In regard to classification of timber on school sections, respondent says: That while he has no positive recollection as to the details of this transaction, still he is willing to assume whatever legal responsibility is placed upon him, and from this standpoint says the timber on these lands was originally classified by a regular State agent, whose duty it was to make his report to the Land Office; this was done soon after the act of 1887 went into effect, during the administration of his predecessor. After said return was made said classification was changed in said Land Office, raising in most of the instances the value of the timber as fixed by the said agent, and the lands mentioned in said articles were included among a great many other tracts, and at this price they remained on the market for about five years unsold. That on the day mentioned in said article, on information received at the office of respondent, which was believed then, and which this respondent still believes to be reliable, he learned that the classification of the timber on the said sections was too high, and on this information the price was reduced to about what it was originally classified at; in some cases the same, and some a fraction less, but in no case less than \$3 per acre. There were good reasons to induce the change in said classification. The said change was made upon reliable evidence, not only from the original State agent who at first classified the timber, but who is now the sworn county surveyor of Jasper county. This respondent has had many dealings through the office with Mr. E. I. Kellie, the party making the statement upon which he acted, and has always

found him not only competent, but trustworthy and honorable, and from his known integrity he would not hesitate to act on his evidence.

Acting within the plain letter of the law as well as the spirit, he did put the timber on these lands on the market. Among other reasons for said acts, he avers the following: First, said timber had been on the market for five years and at a certain price and not sold, and no purchaser known and no application made therefor; second, the school fund was not being benefited and the people were realizing no benefit whatever from it; third, the timber was being destroyed and reduced in value. As in all other matters heretofore spoken of, he was prompted by one desire and one alone, and that was to benefit the people, with no wish or desire to serve one more than another, but all alike, without partiality or favoritism to any man, and expecting no reward save the consciousness of duty honestly done, and the approval of a just people.

In answer to charges contained in articles 23 and 24, he says that during the administration of Hon. R. M. Hall, Messrs. D. H. and J. W. Snyder leased many thousand acres of school and public lands in the western portion of the State for different periods of time; that there are now and were on October, 1891, as many as five or six different leases on file in the Land Office to these same parties, numbering 112, 131, 1893, 2631, 2720, aggregating in the neighborhood of 120,000 or 125,000 acres of land at from two (2) to four (4) cents per acre; they were very desirable leases to the State. Lease No. 1893, under the strict letter of law (leaving it to the discretion of the Commissioner) would have lapsed sixty days after July 6, 1891, which was bringing the annual rental to the school fund of \$1234.84.

Some time in September, 1891, just prior to the time when it would lapse, Mr. D. H. Snyder came to Austin to see respondent about paying the rental. He represented to respondent that on the land he had put valuable and permanent improvements, in wells, wind mills, houses, etc., besides enclosing the whole 61,992 acres with a good substantial fence—improvements amounting in the aggregate to about \$23,000—and that the loss to him to allow the lease to lapse would be heavy, and the loss to the school fund would be large, and the valuable improvements on the said land was ample security to the State. That said lessee requested a short time to raise said lease money, and the State being amply secured, and respondent knowing said lessee to be reliable, and being anxious to save the school fund said annual lease, did grant said lessee a short time to raise said money, which was done and said money paid into the State Treasury, all of which was done according to law, and which respondent is ready to verify. The respondent further avers that having made such extension of time till on or about the 15th of October, 1891, that very soon after that date said \$1234.84 was promptly paid, and said lease was paid in full up to July 6, 1893.

This respondent avers that it is true that he did endorse on lease No. 131 the words "Paid till October 15, 1891," and he states that he intended to put this memorandum on lease No. 1893, and through mistake it was placed on lease No. 131; and this endorsement was only a pencil memorandum, intending to extend the lease No. 1893 to that day, and for no other purpose, all of which he is ready to verify. In regard to lease No. 131, he says that this was for 11,208 acres, lying then in Tom Green

county, which the Messrs. Snyder claimed at the date of the lease to own, and were advised by their attorneys, Messrs. A. W. Terrell and Fisher & Townes, to lease from Hon. R. M. Hall, Commissioner, for reasons not known to your respondent, except from their statement. That they did lease the same for five years, from July 16, 1887, but the lease money was paid only for a little over two years, and it was forfeited or cancelled long before your respondent went into office, as shown by the receipts and papers in said file, and the title to the land named in this last lease is now in litigation and is pending in the Supreme Court, so your respondent is informed and believes; and this he submits as full explanation of the endorsement of the words "Paid till October 15, 1891," and if anything is shown it is that instead of the State losing anything that she has received on said last lease, No. 131, about \$1000 to which she may or may not be entitled, said matter to depend upon the decision of the Supreme Court.

In answer to the false certificate charged, respondent says: When the acts of selling the lands in Liberty and Harris counties by respondent were being considered in the House at the present session, one of his friends, a member of the House, told respondent that in his opinion the construction he placed on section 22 was correct, and that he expected a fight would be up in the House that evening and that he wanted be furnished with a map of Liberty county, showing that none of these lands joined or lay contiguous to any unappropriated public lands in that county. Respondent's son, who was a clerk in the Land Office, prepared and submitted to Mr. C. W. Pressler, an experienced draughtsman in said office of long experience, the map, and he found it correct; this was carried to the desk of respondent to get his certificate to the correctness of the map; respondent was out, and in his absence he was informed and believed that Chief Clerk Bramlette was requested by said clerk to make the certificate, which he declined to do. Being a matter that was pressing, and a member of the House wanting the map, his son, after search, found this respondent, who himself made the certificate. He disclaims any intention whatever of attempting to procure wrongfully or fraudulently any certificate from said Bramlette, or any certificate whatever. He says that the certificate states the truth and that the sections marked blue on said map were in truth and are now detached from any "unappropriated public lands." Respondent avers that he never spoke to said Bramlette, or in any manner whatever attempted to procure said certificate from him, but he avers the fact to be that he did make said certificate himself, and that the same was true and correct and in compliance with the law. All of which he is ready to verify.

Wherefore, having fully answered, your respondent asks that the facts be fully heard by this honorable court without delay, and that he be honorably discharged.

[Signed]

W. L. MCGAUGHEY,
In propria persona.

FAULK,
HENDERSON,
LIGHTFOOT,
WALTON,
As Counsel.

At the conclusion of reading the above, the chair stated that according to the resolution adopted by the Senate this morning, the court of impeachment could take no further action till 3 p. m. to-day.

On motion of Senator Cranford, the court of impeachment adjourned to 3 p. m. to-day.

AFTERNOON SESSION.

Court met pursuant to adjournment.

President Pro Tem. Kearby presiding.

Senator Lewis made the following special committee report:

To the Hon. M. M. Crane, President of the Senate:

SIR: Your Special Committee on Procedure and Arrangements on Impeachment Trial beg leave to report:

After due consultation with the managers on the part of the House of Representatives, and the counsel for the respondent, W. L. McGaughey, we recommend that, as the said impeachment trial will retard, and perhaps prevent, further legislation during the present session, that the Senate resolve itself into a high court of impeachment to hear and determine the pending impeachment cause as soon as the Legislature shall have concluded its general appropriation bill.

That as soon as the exact day and hour of the said trial can be determined, the managers on the part of the House, and the counsel for the respondent shall be duly notified, and on the said date the court shall proceed to hear and determine the matters involved, and the issues joined in the pleadings exhibited, both upon the law and the facts.

LEWIS,
CRANFORD,
McCOMB.

Senator Imboden moved that the court of impeachment do now adjourn, subject to call of the Senate, in order that the special committee report just made might be acted upon in the Senate.

Adjourned.

After action in the Senate on the above resolution, the court reconvened, whereupon Senator McComb moved that the committee appointed by the House to conduct the prosecution be heard from as to its readiness to proceed to trial.

Carried.

Thereupon, Hon. T. S. Henderson addressed the court, stating that the committee to conduct the prosecution desired time in which to acquaint themselves with the rules by which the trial is to be governed.

Hon. W. M. Walton, in behalf of the respondent, answered and insisted that there be no adjournment of the Legislature, but that the defense would not object to a reasonable postponement, stating that the respondent was ready for trial.

Senator McComb moved that the committee on part of the House be requested to put their reasons for desiring a postponement in writing, and file same in the court of impeachment.

By Senator Dean:

Substitute:

Resolved, That the court of impeachment do now adjourn until 10:30 a. m. April 24 next, at which time the relators and respondent in the

cause now pending shall be required to proceed upon the questions of law raised by the pleadings heretofore filed, and that no postponement be granted in the trial of said cause to either party except for good cause shown at said time, the insufficiency of said cause to be submitted to the sound discretion of the Senate sitting as a high court of impeachment.

Adopted.

Senator Lewis moved to reconsider the vote by which the resolution was adopted.

Senator Cranford moved that the court retire to judiciary committee room No. 1 to further consider the resolution.

Senator Smith made the point of order that the Senate sitting as a court of impeachment could not retire in order to consider questions before it.

Not sustained.

Senator Cranford withdrew his motion to retire.

Senator Lewis' motion to reconsider was then lost.

The motion (McComb's) as substituted by the resolution was then adopted, and the court adjourned accordingly.

SENATE CHAMBER,
AUSTIN, TEXAS, April 24, 1893.

The High Court of Impeachment convened pursuant to adjournment, President Pro Tem. Kearby presiding. Quorum present.

Hon. W. M. Walton, counsel for the defendant, suggested to the court that insufficient time, under the rules, had been allowed in which to present the law and to discuss the demurrers.

Hon. T. S. Smith, on part of the committee to prosecute, concurred as to the insufficiency of time and asked that the time be extended.

Thereupon Senator Hutchison offered the following amendment to the rules adopted by the Senate this morning:

Resolved, That the rule giving relator and respondent three hours on each side to the "three" be extended to six hours on each side.

Adopted.

Hon. Henry W. Lightfoot opened for the defense, and pending discussion, on motion of Senator Lewis, the court adjourned subject to the call of the Senate.

AFTERNOON SESSION.

Court met at 3:05 p. m. pursuant to call of the Senate.

President Pro Tem. Kearby presiding.

Hon. Henry W. Lightfoot concluded his argument, the whole being as follows:

Mr. President and Gentlemen of the High Court of Impeachment:

Nearly 1900 years ago a Roman Governor who was clothed with judicial power, had before him two prisoners—the one was guilty of an offense well-known and well defined by the written laws of Rome—the other, according to the decision of that judge himself, was guilty of no offense—and yet that weak, vacillating and infamous judge allowed the robber to go free and condemned the Innocent One to a cruel and ignominious death.

With the precedents before us of all these years of enlightenment, of all our law books, our constitutions and our Bills of Rights, and with the enlightened courts which we have today, there is certainly no use to expect a similar course in our day and time; and yet we are confronted to-day with suggestions not wholly dissimilar, for we maintain that whenever you leave *the written law* and begin to wander into the field of conjecture; or to leave it to any tribunal, no difference how high that tribunal may be, to define a crime and then assess a penalty, and enforce it, you are merely going back of the Dark Ages.

We live in a period of constitutional law; we pride ourselves in our Bill of Rights, a guarantee in this Constitution, and we feel that it is for us and for our children and for our childrens' children forever, and that we are hedged by such strong bulwarks, such grand laws, such constitutions, that the rights of the private citizen are considered safe. Among others we have the guarantees of protection for life liberty, property and reputation. We have those guarantees which tell us that no man's property shall be taken without just compensation therefor; that no man's life, liberty or property shall be wrested from him except by due process of law. Of what law? The law of the land—the law, if I may say it, of this great State of Texas.

Now, if this Honorable Court, sitting as a High Court of Impeachment upon the articles presented by that grand inquest, the House, against the respondent at the bar, finds from the laws of the State of Texas that he is guilty, as charged, and that we have a law naming a crime and fixing a penalty against him, then you have but to enforce it. But, if on the other hand, you find that there is no prescribed law which he has violated, or if you find that this High Court, sitting as a Court of Impeachment, has before it no law defining a crime and prescribing a penalty which you can enforce, then you must say that he shall go hence without day.

Upon the other side, these gentlemen who represent the prosecution are here for the purpose of presenting these articles of impeachment; they are gentlemen able and learned in the law, and we take it that they will present from their standpoint every reason which can be fairly presented.

Upon our side we come to present to you the general and special demurrers which we have interposed, setting forth:

First—That under article XV of the Constitution of your State, there is no clause providing for the impeachment of the Commissioner which is self-executing, and which lays down and defines a crime known to the law for which he can be called to answer, or affixing a penalty thereto.

Second. We claim that the charges as presented by this grand inquest of the State contain no matter which is impeachable. In other words, that they charge no offense known to the law of the State of Texas.

These are the two leading propositions. In addition to these there are special exceptions, to which I need only refer. Among others, that an officer cannot be held responsible for acts antedating his election. Why? Because, as high as this court is, sitting as a Court of Impeachment, there is yet a higher court—the people—and they

have sat in judgment upon all questions antedating his election, so that all of them must be cut out. There are other special exceptions which go to those clauses of the Articles of Impeachment, which seek to charge acts upon his part not in themselves illegal, and with matters which rest within his discretion as an officer, and with which I think the Court will not undertake to interfere.

Now, with these remarks, laying down the propositions which we shall attempt to maintain, without reading papers, because I think you will understand those, we shall endeavor to give you our ideas of an impeachment and what is its nature and character, and then something of this Court and its power and jurisdiction.

As you well know, this question of impeachment is an old one. It goes back to the German law, and among our fathers in England we know it was exercised for a great number of years with varying results. Sometimes one political party would be in power, and then they would seek to impeach the leaders of the other, and *vice versa*, and so for nearly one hundred years England was torn to pieces by impeachment trials until they became absolutely and perfectly ridiculous. But after awhile they began to come down more closely to the law, and to define what it was that would authorize an impeachment. They had various questions before them: for instance, malversation in office. Well, what is that? I do not know—do you? Maladministration. What is that? I do not know, and I do not suppose anybody else does. Well, so it was, that under these vague and indefinite terms they had impeachable offenses so vaguely defined as to be able to impeach almost any officer, with or without just cause. Suppose we had something of that old English rule here to-day in Texas and with the political combinations which tore Texas to pieces during the last campaign?

Imagine the opposition in the saddle, and if that old idea could prevail, how long would it take them to arraign the present administration for "high crimes and misdemeanors," as they claimed and charged them from every stump in the State of Texas. Or suppose they should reign for a brief season and then go down, how long would it take the victorious party to arraign the other side for "*high crimes and misdemeanors*?" You know that term has india rubber in it and can be stretched.

So we see the absolute necessity for establishing a definite law upon the subject and bringing it down to questions which may and be determined before the court.

For a great number of years in England, impeachments were used as an engine of oppression to crush political enemies. This was well illustrated in the speech of the Lord Carnavan in the Earl of Danby's case in 1678 (which Professor Dwight says, is the only one he ever made in Parliament). He said: "My Lords, I understand but little of Latin but a good deal of English and not a little of English history, from which I have learned mischiefs of such kind of prosecutions as these, and the ill fate of the prosecutors. I could bring many instances, and those ancient; but, my lords, I shall go no farther than the latter end of Queen Elizabeth's reign, at which time the Earl of Essex was run down by Sir Walter Raleigh. My Lord Bacon, he run down Sir Walter Raleigh, and your lordships know what became of my Lord Bacon. The Duke of Buckingham, he ran down my Lord Bacon and your lordships know what happened to the Duke of Buckingham. Sir Thomas Wentworth, afterwards Earl of Strafford, ran down the Duke of Buckingham, and you all know what became of him. Sir Harry Vane, he ran down the Earl of Strafford, and you know what became of Sir Harry Vane. Chancellor Hyde (Lord Clarendon) ran down Sir Harry Vane, and your lordships know what became of the chancellor. Sir Thomas Osborne, now Earl of Danby, ran down Chancellor Hyde, but what will become of the Earl of Danby, your lordships best can tell. But let me see that man, that dare run the Earl of Danby down and we shall soon see what will become of him." 11 Howell State Trials, 632, 633.

This fairly illustrates the farce of impeachment trials where positive rules of law are overlooked.

Just preceding the formation of the American Constitution they had a noted trial in England, the trial of Lord Macclesfield, in which the judges, or the House of Lords sitting as judges, sought to hold the parties down to questions of law and to hold that an impeachment could not be had, or

rather that a conviction could not be had (for there is a difference between an impeachment and a conviction), unless the party had violated some known law, and that was the rule adopted in the Earl Macclesfield's case. 16 How. S. T. 123. They held it to be the true rule. Well, following that case, was our American Constitution. Those old constitution makers, Mr. Bancroft says, "were the godliest fellowship of lawgivers whereof this world holds record." I am inclined to believe it; for they sat there for days and weeks and months, some of the grandest intellects of our country, and gave a constitution which Mr. Gladstone says was the grandest piece of work ever struck off at a given time from the brain and purpose.

Now let me refer you briefly to the debate in the constitutional convention upon the impeachment clause, as reported by Mr. Madison. (See 3rd Madison's Papers, p. 1528:)

"Col. Mason: Why is the provision restrained to treason and bribery only?" (This was when the provision of the Constitution as first reported to the convention restricted causes of impeachment to treason and bribery only.) "Treason, as defined in the Constitution, will not reach many great and dangerous offenses. Hastings is not guilty of treason. Attempts to subvert the Constitution may not be treason as above defined. As bills of attainder, which have saved the British Constitution, are forbidden, it is more necessary to extend the power of impeachments." He moved to add after the word "bribery", "or maladministration."

Mr. Gerry seconded it. (Now here comes the grand old man whom we all love and revere:)

"Mr. Madison: So vague a term will be equivalent to a tenure during pleasure of the Senate."

Mr. Gouverneur Morris said: "It will not be put in force, and can do no harm. An election of every four years will prevent maladministration."

Col. Mason withdrew "maladministration," and substituted these words: "Other high crimes and misdemeanors against the state."

They accepted that, which left the cause for impeachment in the Constitution for "treason, bribery and other high crimes and misdemeanors."

Now, this looked like they were coming down to law, for "high crimes and misdemeanors" are usually defined by the written law of the country. Notwithstanding that, and notwithstanding the fact that these old men thought they had settled it, and settled it on a basis which looked as though they could not get away from it, still men began to quibble over these words: "Other high crimes and misdemeanors." What do these words mean? Covering a period of a great number of years, this question was discussed, *pro* and *con*. What can you make out of it? Where does it reach? Following that Constitution in the year 1806, and following the precedent which England had set herself in the trial of Lord Macclesfield, they tried Lord Melville in England. They looked across the water and saw what their younger English brothers had done, and no doubt those old judges in the House of Lords felt proud of the principle they had established, and in the case of Lord Melville, their lordships asked this question: "Whether Lord Melville was guilty of any crime which had been defined by the law of England?" The answer was, that he was not. "Then you will find the defendant not guilty." (29 How. S. T., 1470.) You see they thereby brought it down to positive law, and when that was done, in 1806, it closed impeachment trials, so far as England was concerned, and she has never had another from that good day until this.

So, that when hedged about with positive law, when guarded in such a way that the officer must be guilty of the violation of some positive and well defined law of the land before you can reach him by impeachment, the rights of the officer may be protected and at the same time the safety of the State guaranteed.

The first trial for impeachment in the United States was the trial of United States Senator Blount in 1797. You no doubt remember something of the history of that. It is worth but little as a precedent, as he was acquitted on the ground that he was not an officer of the United States, but of a State.

The next was the trial of Judge Pickering in 1803. That was worth but little for the reason that the defendant was shown to have been insane. He

did not make his appearance to answer the charges and the case was tried *ex parte*. So the Pickering case is worth nothing as a precedent.

Next was the trial of Judge Chase—the most noted trial in the United States. He was a Supreme Judge of the United States and was tried in 1804-5. In that case was arrayed probably the ablest counsel in the United States, and the trial lasted a long time. The proceedings take up two volumes. The Chase trial is worth something, and why? Because upon the one side it was contended by Mr. Hopkinson and Luther Martin and such men as that, able and distinguished counsel, that a conviction could not be had, unless the offense was a violation of a known law of the land, and was an indictable offense. Judge Chase held that, in an able presentation of the question. On the other hand it was contended by counsel on the part of the prosecution, led by Mr. Randolph, that while it might be as contended by the other side, that it must be a violation of the law of the land, yet it need not necessarily be indictable. What position did the court take? The court, on a full hearing of all the questions, acquitted the defendant. So that the precedent established in the Chase trial fixed the rule that it must be an offense which is indictable in law.

The next was the Peck case. He was a United States district judge from Missouri, tried in 1831, and acquitted.

The next case was that of Judge Humphries, a United States district judge in Tennessee, in 1862. They impeached and convicted him during a time of high political excitement, on the ground mainly that he made secession speeches, and they put it on the ground that he was encouraging treason against the government. If that was treason, how many of us were guilty of treason? The same rule would have applied to almost every government officer south of Mason and Dixon's line who took part with their country, and with their native land. While Judge Humphries was convicted, yet it was for a claimed violation of one of these higher offenses named in the Constitution, according to their interpretation of it. The conviction was wrong. This case is of no value as a precedent.

The next was the trial of President Andrew Johnson in 1868. You remember for what he was arraigned. Mr. Johnson made one of the boldest and grandest fights for constitutional government known to history. He boldly threw down the gauntlet and took the position that as executive of this great country, he had the right to determine and interpret the law as he believed it to be under the Constitution, and under it he removed the Secretary of War and put another in his place. You remember the high political excitement which existed then, and notwithstanding the remembrances of the war and the disorganized condition of the country which left his own section of the Union almost disfranchised, Mr. Johnson stood there like a solid rock, and there was virtue enough in the United States Senate to stand by him, and they could not convict him.

In this case the democratic minority in the House of Representatives committee (on the impeachment of Mr. Johnson) in their minority report proved that an *impeachable offense is an indictable offense*, and that impeachment will not lie for any other character of crime. Paschal's Ann., Const., 3d Ed., note 194 on page 188. This is the democratic view of the question. The majority presented the republican view. Every democratic vote in the Senate sustained the view presented by the democrats of the House. The editor of this work (a republican,) says on page 329: "They admitted no offenses against good morals merely; no common law offenses, no parliamentary precedent, impeaching for merely political offenses or bad behavior." In other words; impeachable offenses must be defined by the written law of the land.

Thank God for this grand doctrine, upheld by that little band of democrats! They clung to true constitutional government as the rock of safety in that dark hour. Its announcement was the first glad note of liberty which thrilled every beleaguered southern heart after the war. It was the first bright gleam of hope above a gloomy horizon. It saved the President. It saved the south. It upheld that grand bulwark of free government under which every man's life, liberty, property and pursuit of happiness are guaranteed, and cannot be taken away, except by due course of law—of *written law*—of law which prescribes the offense before affixing a penalty.

Secretary Belknap was tried in 1874, these being the only two executive

officers whom they have ever attempted to impeach in the United States. Both were failures.

So that out of the seven trials by the Senate of the United States there were two convictions: one of these an old crazy man on an *ex parte* trial, Judge Pickering; the other, Judge Humphries, during a time of war and high political excitement. So that impeachment in the United States, so far as the United States Senate is concerned, has been a failure.

What is the history of impeachment in Texas? How far has it reached? To what extent has it gone?

If I read correctly they attempted to impeach Judge Russell in 1871. The whole case went off on demurrer. The fourth article was first demurred to and stricken out; then articles 1, 2 and 3 were demurred to and stricken out, and it was practically held by the Senate of the State that there was no sufficient law under which to convict him. They charged that he had violated his obligation of office, that he had violated the Constitution, had forcibly denied a citizen the freedom of speech, the freedom of the press, and had wrongfully cast him into prison. If the charges against him were true, and the Senate had a right to impeach or convict for offenses not criminal, then they certainly could have convicted him under those articles, but the Senate discharged him upon general demurrer. This is a precedent exactly in point. (See Senate Journal 1871.)

Next, we have Judge Chambers in 1874, and I believe Judge Scott about the same time. Judge Chambers was acquitted. Judge Scott died before a final conclusion of the trial.

This is the history of impeachments in Texas.

Here, a few years ago, they had a judge arraigned from the Panhandle—Judge Willis. They attempted to address him out and failed. That is hardly a precedent, because it is hardly an impeachment, but an address. Judge Willis was acquitted. So that, when we come to the State of Texas, we cannot find a single case which has ever been sustained—not one.

Now let us go a little further into it, and see what crimes were intended to be crimes for which you could impeach. What is the character of the crime for which a man can be impeached? Is it a criminal charge? Let us see a moment. Here is what Mr. Black, in his law dictionary, lays down as an impeachment: "A *criminal* proceeding against a public officer before a quasi political court, instituted by a written accusation called articles of impeachment." It is an accusation. It stands in the place of an indictment.

Rapalje and Lawrence give substantially the same definition: "An accusation in writing against an officer for a high *public offense*, such as treason, bribery and other high crimes and misdemeanors." It must be a crime. Well, what is a crime? You all know what a crime is, and this High Court of Impeachment is the highest criminal court known to the laws of the country. Speaking of impeachments, Judge Miller, in his able work on the Constitution, says this: "The uncertainty as to what must be the nature of the offenses which will justify a conviction on trials of impeachment, is another reason why it is so seldom resorted to. Article 2, section 4, declares that the President shall be removed from office on impeachment for and conviction of treason, bribery, and other high crimes and misdemeanors. Treason and bribery are easily understood, but no satisfactory definition has ever been given or generally accepted of the phrase 'or other high crimes or misdemeanors.'" (Miller's Constitution, p. 214.) On page 217 he says: "It is a cumbersome process and very apt to fail." (I think he is about right.) "A competent observer says that 'it is the heaviest piece of artillery in the Congressional arsenal, but because it is so heavy it is unfit for ordinary use. It is like a hundred ton gun, which needs complex machinery to bring it into position, an enormous charge of powder to fire it and a large mark to aim at.'" Now it seems to me that Judge Miller is about right. What character of offense was it intended by the Constitution that impeachment should aim at? Was it an offense so small that even a recorder's court could not take jurisdiction of it? Is it an offense so small that a justice of the peace could not consider it? Is it an offense so small that it could not be tried in the county court? Is it an offense so small that a district court could not try it? No; but is a crime so large that it requires the heaviest artillery in the arsenal of the State to reach it. As it is, it seems to me the great State of Texas is pointing

her heaviest artillery at something that does not even reach the magnitude of a snowbird; because you may examine every article presented, and there is not one under which an indictment would lie, or an information even before a justice court. And yet they seek before this High Court of Impeachment to arraign the defendant and try him here for what? For what? Why they tell us that he has sold some land down in Liberty and Harris counties, that he has misinterpreted the law, and in one of the articles they use the expression that he erroneously did it. Well, if you should aim the great battery of the State against every district judge who has erroneously made decisions, what would become of the State? If you aim the heavy batteries of the State against every high court which had itself committed errors, as it confessed, what would become of the State? If you aim the great artillery of the State at the errors of his Excellency, or of the Legislature, what would become of it? *What would become of it?* Great God! I tremble at the question.

Why I read from the newspapers—I do not know, it may not be true—that every now and then the legislative department of the State sends a bill over to the Governor, and it comes back all over covered with a magnificent veto message, which says: “You have erred; you have not only erred, but you have violated the Constitution of your State, and of the United States;” and although it may go against the grain of Senators and Representatives to receive it, yet as faithful public servants, when they read it, they begin to compare it with the law and they find that His Excellency is right and that they had better not to pass it over his veto. Or it may be, that when his Excellency sends in that great veto message, you will examine it in the light of authority, and you will say his Excellency is wrong and you will pass it over his veto. Why there is error all along the line. If every public officer is to be convicted before a High Court of Impeachment because he has committed errors, what is to become of the people? Why arraign one public officer along this line, and let all others go free? You cannot do it. If you, without any written law, arraign and try and convict and remove an officer of the executive department of the State government you send a poisoned arrow quivering through the very heart of constitutional government.

Judge Miller is right—this heavy ordnance is to be aimed only at heavy crimes. Just imagine a great artillery company out here, practicing a mile off at a snow bird. Yet here is the great artillery of the State brought to bear against something which is confessed not to be a crime according to the laws of the State.

Judge Story, a writer whose opinion, I am told, will be invoked by the learned gentlemen on the other side, has made some wholesome observations, and I commend them to my friends:

He says: “The next inquiry is, what are impeachable offenses? They are treason, bribery and other high crimes and misdemeanors.” (He was talking about the Constitution of the United States, not of the State of Texas.) “For the definition of treason, resort may be had to the Constitution itself, but for the definition of bribery, resort is naturally and necessarily had to the common law, for that, as the basis of our jurisprudence, can alone furnish the proper exposition of the nature and limits of this offense. The only practical question is, what are deemed high crimes and misdemeanors? It is not every offense that by the Constitution is impeachable.” (Now listen). “*It must not only be an offense, but a high crime and misdemeanor.*” 2 Story’s Constitution, sec. 794.

I will show you what our State law says is an offense. It says that it is something which is punishable. “An offense is an act or omission forbidden by positive law, and to which is annexed, on conviction, any punishment prescribed in this code.” Penal Code, art. 52. They ask us—what could positive legislation do in cases of impeachment like the charges against Warren Hastings, in 1788? By the way, they nearly always talk about Warren Hastings when they go to take up the subject of impeachment. That grand old man, after undergoing the fire of the English High Court of Impeachment for a great number of years, was finally acquitted and died an honorable citizen of his country; not only honorable, but honored, because he was elected to a high position by the University of Oxford, after he was acquitted of that offense.

I trust that I shall be pardoned for calling the attention of this High Court to the admissions of the most eloquent prosecutor, in the greatest State trial the world has ever known. Mr. Sheridan, as one of the managers of the impeachment of Warren Hastings before the House of Lords, June, 1788, said: "It is the glory of the Constitution under which we live that *no man can be punished without guilt*, and this guilt must be publicly demonstrated by a series of clear, *legal*, manifest evidence, so that nothing dark, nothing oblique, nothing authoritative, nothing insidious, shall work to the detriment of the subject. It is not the peering suspicion of apprehended guilt. It is not any popular abhorrence of its wide spread consequences. It is not the secret consciousness in the bosom of the judge which can excite the vengeance of the law and authorize its infliction. No! In this good land, as high as it is happy, because as just as it is free, *all is definite, equitable and exact*. The laws must be satisfied before they are incurred; and ere a hair of the head can be plucked to the ground *legal guilt* must be established by *legal evidence*." The eloquent counsel might have added to this that *legal guilt* must be clearly charged in the articles of impeachment. In this case it has not been done.

Right here let me make a suggestion. A great many have an idea that a court of impeachment, because it is the Senate that sits as such, by a strange power they have never been able to define, can reach further than any other court. But sitting as a court of impeachment, you sit here to try, what? Did you listen to the oath read by the Justice of the Court of Appeals, and and to which the presiding officer subscribed? It is not your oath as a Senator of the State of Texas, but a separate and distinct oath, which converts you from a Senator to a judge. As a State Senate, you might, as a co-ordinate branch of the legislative department, make a law, provided you could get the other house to agree to it, and his Excellency to sign it; or in the absence of that, if you could get the necessary majority, to pass it over his veto. But sitting as a Court of Impeachment, this court is absolutely powerless to do anything except enforce the written law. Any other proposition would be monstrous. Can you determine by an arbitrary discretion what are the offenses for which a man can be convicted and his office taken away from him? Not a word of it. You must sit as a court, and the law must be carried out as it is written. Now here is what Judge Story says about leaving it to the arbitrary discretion of the Senate: "Resort must then be had, either to the common law practice or the whole subject must be left to the arbitrary discretion of the Senate for the time being. The latter is so incompatible with the genius of our institutions that no lawyer or statesman would be inclined to countenance so absolute a despotism of opinion and practice as to make that a crime in one person, or at one time, which would be deemed innocent in another person, or at another time." 2 Story's Const., sec. 795. He holds to the law. He stands by the written law. Because, as was said by Mr. Hopkinson in that magnificent speech of his, before the Senate of the United States upon the trial of Judge Chase: "If you undertake to leave that discretion in any court on earth, what do you do? You make that a crime to-day which was not a crime yesterday; you make that law to-day which yesterday was not law."

Let us suppose few a cases. We are constantly undergoing political changes. One political party is in power to-day and another to-morrow. To-day, or perhaps to-morrow, we have the triumph of a great moral party, a great moral upheaval; or as Colonel Culbertson said, when he had the prohibition question up in our section, "a great moral ground swell."

Each change sweeps into office men of different views. Now, here sits a Senate as a high court, with no written law to guide it, nothing but their own discretion. One gentleman will get up and say: "I have a high idea about this thing of official misconduct, and I say to you, that any officer in the State of Texas who goes into a saloon and takes a drink of whisky, or who goes fishing on Sunday or kisses his wife on fast day, must be impeached." What are you going to do? They are all very much of that opinion, and they impeach him. What will all of that lead to? Can any such reasoning prevail? Would not such procedure be dangerous to the liberties of the country, by making a crime to-day of that which was considered innocent yesterday? If that rule were invoked, how many officers of the State of Texas would go unwhipped by impeachment? How many?

If you are going to make it a law, you must say so in plain und unquestionable language, and not leave it to be measured by the unknown "discretion of Senators," because Judge Story says such a doctrine as that would be monstrous.

Come a little further down the line. Lawyers have always revered the name of Blackstone; he was a grand man, and is a grand authority. What does he say: "An impeachment is a prosecution before the House of Lords by the Commons of Great Britain in Parliament." (Is a prosecution for what?) Is a prosecution "*of the already known and established law, and has frequently been put in practice.*" 4 Blackstone's Comm., 259. A known and established law.

If you are going to convict this respondent under any of these articles, you must show us a well defined law by which you propose to convict him of an offense. It must be a pre-existing law, defining the offense and affixing a penalty. (Blackstone's Comm., vol. 4, p. 259.)

I have in my hand an article prepared by Prof. Dwight, which I consider by far the ablest thing of the kind I have ever seen. This is a lecture before the students of Columbia College, in which he lays down the doctrine in America so clearly that I do not think it can be mistaken. The fact is that about that time, 1867, they were getting up the impeachment articles against Mr. Johnson, who was impeached the following year, the proceedings having been begun in 1867. Judge Lawrence, who was one of the prosecutors of Mr. Johnson, deemed it a matter of great importance that he should get his brief published, so as to meet the force of Prof. Dwight's overwhelming argument, but he has not been able to break its force. Prof. Dwight says: "If we now recur to an impeachment, it will be found that it is an indictment presented by a body of men, for a *crime committed*. The trial must be conducted in accordance with the rules of evidence observed in ordinary courts. * * * The result is, that unless the crime is specifically named in the Constitution, impeachments, like indictments, can only be instituted for crimes committed against the statutory laws of the United States." (Am. Law Rep., 269.) The person impeached can only be convicted of a crime known to the law. Again he says: "But the law was settled, after the most prolonged discussion, in favor of the doctrine that the courts of impeachment must administer the same law as the criminal courts. (12 How. St. Trials, 1213.) Thus, the Earl of Orren was not tried in A. D. 1669, as the offense charged was thought not sufficient to establish treason, and the case was directed to be heard in a court of law. (6 How. State Trials, 917.)" (6 Am. L. Reg., 266.)

Speaking of Lord Melville's case: "The question was put to the judges, whether the acts with which he was charged were unlawful, and it having been confessed that they were not, Lord Melville was acquitted." (29 How. State Trials, 1470; Id., 267.)

Here is his final conclusion upon that subject, after a very learned argument: "The result is, that unless the *crime* is specifically named in the Constitution, impeachments, like indictments, can only be instituted for *crimes committed against the statutory law the United States.*" (American Law Reg., 269.)

Some writers hold that the crime can be defined by common law, but it must be a *crime*. I have seen it claimed by Mr. Lawrence in the argument which he prepared for the impeachment of Mr. Johnson, that it was not necessary for the offense to be a crime; but his doctrine is not sustained by authority.

In a very late work of great merit it is said: "It seems to be conceded that no impeachment will lie, except for some breach of the common or statute law, the distinctive feature being that the offense must represent *such a crime as would render the person liable to indictment in any county in the State.*" (Ordranoux's Constitutional Legislation, p. 441.)

The act of punishment presupposes a *crime* to punish. In *Cummings v. Missouri*, 4 Wall., 320, Judge Field says: "Disqualification from office may be *punishment*, as in cases of *conviction* upon impeachment." In the same opinion he quotes from Judge Marshall in the case of *Fletcher v. Peck* as follows: "The Legislature is then prohibited from passing a law by which a man's estate or any part of it, shall be seized for a *crime* which was not declared by *some previous law*, to render him liable to that punishment." Id., 326.)

Now let us come down a little more closely to our own State. For what crime can you impeach in the State of Texas? Our State Constitution of 1876 is exactly the same as our Constitution of 1869, with but few exceptions, and I will state those briefly. Sections 1, 2, 3, 4, 5 and 6 are as they were in the Constitution of 1869.

The Constitution makers added section 7, which referred the whole question to the Legislature for regulation, and section 8, which provided for an address against judges of the different courts. That is all the change, and it is a considerable change, too. Because when you come to weigh it and look at the matter in its clear light, you will see that section 7 means much. "Article XV. Impeachment." Now, the first section vests in the House power to impeach; that is clear; no question about that.

Section 2 vests in the Senate the right to try. It includes the Governor, and I want to call your especial attention to this, because it is the only clause of the Constitution which gives any power as against the Commissioner of the General Land Office. It provides that the Governor, Lieutenant Governor, Commissioner of the General Land Office, Attorney General, etc., and the judges of the Supreme Court, Court of Appeals and District Court shall be tried by the Senate.

Section 3 prescribes the oath.

Section 4 prescribes the character of judgment than can be rendered.

Section 5 provides that the officer may be suspended.

Section 6 provides for the removal of judges by the Supreme Court.

Section 7 says this: "The Legislature shall provide by law for the trial and removal from office of all officers of this State, the modes for which have not been prescribed in this Constitution."

Section 8 provides for the removal of judges by address.

See how peculiar that is, and how laws naturally follow offenses. The State had only had three trials for the removal of officers; they were all trials of judges. So it seemed that the Constitution makers and the law makers under it, at that time, centered all of their batteries upon the judges. They actually provided three different modes for removing judges. By section 2 they could be impeached; by section 6 it was provided how they might be removed by the Supreme Court; and by section 8 they could be addressed out. Those were all for the judges, and if you will bear in mind, and begin to think a little about the kind of judges that are referred to, and will examine the Revised Statutes, you will see that they practically follow the Constitution, except they go on further and add the right conferred in that chapter, as against the criminal courts at Galveston and Houston, so that they could proceed against them the same way. They name the judges of the Supreme Court, the Court of Appeals and the district court, and the statute adds these two criminal courts. There has been some change by amendment to the Constitution and laws, so that we have some new courts, and accepting the idea of the law, that the expression of one is the exclusion of the other, tell me how you would remove a judge of the Court of Criminal Appeals, or a judge of the Court of Civil Appeals under those articles of impeachment. There is absolutely no provision made for it.

I refer to these matters merely to show you that this Constitution is imperfect, and upon the subject of impeachment the statute is very imperfect. The truth about it is, that the Constitution makers, in dividing out the work, had proceeded through nearly one-half of the work of the convention before the question of impeachment was thought of, and it was only when the chairman of the Judiciary Committee came in and suggested to the convention that they ought to make a special committee on impeachment, that the committee was appointed at all. So they went on and adopted the old Constitution of 1869 down to and including section 6, and added to it sections 7, calling for legislation, and 8, which gave the power to address judges out.

Now show me the section of the Constitution and the article, or show me the section of law in the statute, which gives the right to impeach the Executive or any member of his department, giving the definition of the offense, or even naming the offense for which he may be impeached. You cannot find it. It is not there. You may search from beginning to end and you will not find it. You will find that a large discretion has been lodged with the Legislature, sitting as a Legislature, to define offenses, but there is no legislation covering it.

Now, I confess that there is a difference between the Constitution of the United States and the Constitution of the State; because the Constitution of the United States is a Constitution of granted power, and no power can be exercised unless therein especially granted. While on the other hand, the Constitution of the State is merely a constitution of limitation, and the Legislature of the State can pass any law, unless it comes in conflict with the Constitution of the State or of the United States or some law or treaty made in pursuance thereof. So that, if the Legislature, sitting as a Legislature, had defined the offenses for which an impeachment of the Executive or of the Commissioner of the Land Office would lie, or that of any other member of the executive department, then there would be no trouble about it, but in the absence of this, is this High Court to be called upon to make a law, define the offense, and affix the penalty? Will you undertake to do that which Judge Story says would be infamous? You cannot do it. Then, when I invite your attention to the consideration of our Constitution and laws, and ask you, and ask the relators, who are able and learned in the law, to point to the section of the Constitution, to the section of the law, which justifies it, and they cannot find it, what will you do? Necessarily you must sustain the demurrers, because there is nothing before you.

They may talk about precedent. There is no precedent for this trial; none whatever. Because there has never, in the history of the State of Texas, been an effort made to impeach a member of the executive department of the State of Texas—never.

This section of the Constitution and its interpretation is a matter of first impression before you. How will you construe it? Can this court undertake to say: "I sit here all powerful; I reach out my arm because I have power, and wrench from a citizen a right, and take from his hand an important franchise, which has been intrusted to him by the people of this great State, and I will do it without written law?" Gentlemen of the court, can you entertain such a proposition? Can you think of it for a moment? No! No!

There are some sections of the Constitution which are self-executing and some which are not. Tell me, if you can, how section 2 is self-executing, when it merely says that impeachments of these officers shall be tried before the Senate. How can that be self-executing? What would be a self-executing section of the Constitution? It would be one defining an offense, unless it is already clearly defined in law, and affixing a penalty. Judge Cooley says: "A constitutional provision may be said to be self-executing if it supplies a sufficient rule by which the right given may be enjoyed and protected, or the duty imposed may be enforced, and it is not self-executing when it merely indicates principles, without laying down rules by means of which those principles may be given the force of law." (Cooley's Const. Lim., pp. 99, 100.

Our own Supreme Court, in the case of the Galveston, Harrisburg & San Antonio Railway company v. The State, reported in the 77 Texas, in an able opinion by Judge Henry, which is lengthy, and which I will not undertake to read, lays down the same rule in regard to the interpretation of the Constitution as Mr. Cooley, and shows the difference between a section of the Constitution which is self-executing and one which is not self-executing, so that I take it, there will be no question here. I do not think that any of these learned gentlemen will claim that this section of the Constitution is self-executing. It cannot possibly be self-executing.

Now what is the nature of a crime for which impeachment may be had or man removed from office? You find that the Constitution, and the laws made under it, provide for numerous removals from office, but none of them apply to the Commissioner of the General Land Office; and they, on every side, put up their sign boards, and say: "These refer to district or county, or this, or that, class of officers." They are all well labeled. In speaking of laws under which removals may take place, Judge Stayton, in 78 Texas, 393, (and he is not talking about State officers at all, because there is no law authorizing the removal of one of the executive department), says: "The coupling of the words wilful and corrupt, indicate that bad motive is necessary, under the statute, to make the act wilful, and that the fact that the act or omission was done in obedience to the will, was intentional, is not enough. As was said in 20 Pickering, 220, the word wilfully, in the ordinary sense in which it is used in the statutes, means not merely volun-

tarly, but with *bad purpose*. This definition was approved by the Supreme Court of the United States in 6 Otto, 702. The statute under consideration is one *penal in character*, and must be construed as though it were one defining a *crime* and prescribing its punishment."

We will now endeavor to go into our State Constitution a little more fully for the purpose of showing the *criminal* nature of the law referred to. Bear in mind that a crime, for which impeachment may be had, is a high grade of offense. It is not, as Judge Miller says, one upon which we can use small arms. It is of a higher grade. It is one so high that the Governor in his pardoning right and pardoning power cannot reach it. If a party is impeached and removed from office, the court can affix a higher penalty still. What is it? That he can never hold office again. It is a penalty which is almost equal to death itself. It is a penalty upon which generations can look back and frown. It is a penalty which affects a man while he lives, and will live upon his children and his children's children forever. It is a higher crime; a crime for which the Governor can not pardon; a crime, the punishment of which not only wrests from him his office, but says to him: "Go!" And as the slowly moving finger of scorn points him out, tells him: "You can never hold office again in this State—never." Do you know of a severer penalty? It is spoken of as the punishment of a *crime*. The Constitution itself calls it a crime. In speaking of the Governor's pardoning power, it says: "*In all criminal cases, except treason and impeachment, he shall have power to grant reprieves, commutations and pardons.*" In other words, *in all criminal cases, except the criminal cases of treason and impeachment, showing that the Constitution makers intended to mean, and did mean, that it was a crime to which the heaviest penalty almost known to the law could be attached. There is no penalty without a crime; punishment presupposes a crime. In various other places in the Constitution it is referred to as criminal. This Constitution, in referring to removals of other officers, for other offenses, treats it as a criminal proceeding.*

In section 24, article V, we find a clause which is clearly self-executing. It provides that district attorneys, county judges, county clerks, justices of the peace, etc., may be removed by district judges. Suppose they had stopped there? What would you have said? Would you have said this clause is now self-executing? No! but it adds, "*for incompetency, official misconduct, habitual drunkenness, or other causes defined by law, upon the cause therefor being set forth in writing, and the finding of its truth by a jury.*" There is a self-executing clause. There is a clause which names offenses and affixes a penalty. In article XV, section 2, we find no such provision. They may liken it to that clause of the Constitution of the United States which authorizes impeachment, but what is that clause? We find exactly the same clause that we have here. It is almost a verbatim copy. Our Constitution is almost copied from the Constitution of the United States; that is, from that portion of it which authorizes the impeachment of the President and other officers named, and stops there. It says that the Senate may sit as a High Court of Impeachment and the House may present articles of impeachment. But section 4, article II of the Federal Constitution names the offenses for which officers can be impeached: "*For treason, bribery and other high crimes or misdemeanors.*" You do not find that in our State Constitution; you do not find any offense named. How can you undertake to fix one, when the law does not fix it? It is not fixed either by the Constitution or by statute. In Texas we have a statute that is different from that of any State in the Union, and I thank God for it. We have one of the grandest systems of law known to civilization; and when you come to questions of exemptions, and homesteads, and community property, and all of those things, the enlightened states of the world are simply following in the track of Texas. Not only that, but we have one of the grandest systems of criminal jurisprudence; and not only that, but it is a system of our own; it is not a system borrowed from somewhere else. We find in those great State trials by impeachment under the Constitution of the United States they invoke, on one side, the common law, and on the other side the statutory law of the United States; but in this case, we are not called upon to go outside, either to the common law or the statute law of the United States or anywhere else, except Texas, and you can not go anywhere else. This being a *penal offense*, you must go to the Penal Code

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of Texas to find the offense, you can not go elsewhere, and I defy the gentlemen to find any cause of impeachment there laid down. Now can you go to common law if you want a definition? Can you go to some statute, or to the Constitution of the United States? No; you must stop whenever you get to the borders of Texas. Article 3, Penal Code, says: "In order that the system of penal laws in force in this State may be complete *within itself*, and that no system of foreign laws, written or unwritten, may be appealed to, it is declared that no person shall be punished for any act or omission," (that is broad) "unless the same is made a penal offense and a penalty is affixed thereto *by the written law of this State*." Then where do you go with your common law? You may talk about high crimes and misdemeanors, but when you try a man in Texas you must go for an offense to the written law of the State, and nowhere else.

Now, for fear that this might not be certain enough, our statute goes on: "Whenever it appears that a provision of the penal law is so indefinitely framed, or of such doubtful construction that it can not be understood, either from the language in which it is expressed or from some other written law of the State, such penal law shall be regarded as wholly inoperative." (Penal Code, Art. 6.) You can not get it by construction; you can not reach it by common law; you can not reach it through the Constitution of the United States; you can not take up a remote statute of Texas and reach it by construction; the law must be *plain* and *clear*, otherwise it is wholly inoperative.

Article 9 says: "This code, and every other law upon the subject of crime which may be enacted, shall be construed according to the plain import of the language in which it is written, without regard to the distinction usually made between the construction of penal laws and laws upon other subjects, and no person shall be punished for an offense which is not made penal *by the plain import of the words of the law*."

Section 12. "*No act or omission can be punished as an offense unless the law making it penal was in force at the time such act or omission took place.*"

This especially cuts out all of that doctrine that a High Court of Impeachment, because it happens to be a Senate, can in some way interpret the law so as to prescribe the offense and fix a penalty. Nosir; before a law can be enacted there must be a bill; it must be regularly enacted by both houses of the legislature, under the approval of his Excellency. You cannot try a man unless it was a law at the time the offense was committed.

Then we have a definition in the criminal law of an "*offense*:" Article 52. "An offense is an act or omission forbidden *by positive law*, and to which is annexed on conviction any punishment prescribed in this code." So that our system of law is complete in itself; is full and clear within itself, and unless the respondent has been guilty of some offense prescribed by law, for which he may be convicted, and with a penalty attached to it, you cannot try him. I think that is clear.

Article 53 of the Penal Code provides: "Offenses are divided into felonies and misdemeanors." Article 54. "Every offense which is punishable by death or imprisonment in the penitentiary is a felony; every other offense is a misdemeanor." Article 57. Offenses are again subdivided and classified as follows: 1. Offenses against the State, its property and revenue. 2. Offenses against the executive, legislative and judicial departments of the government, etc.

Article 58 prescribes punishments prescribed for offenses under this code: First is death; second imprisonment in the penitentiary for life or for a time; third is imprisonment in the county jail; fourth is *forfeiture of civil or political rights*; fifth is pecuniary fine. Article 62, provides: "When the penalty affixed to the commission of an offense is *deprivation of political rights*, such rights are intended to include the *rights of holding office*, of serving on juries, and of suffrage."

Now it is proposed to try a citizen before this high court for these alleged offenses and to take away or forfeit his right to an office which the people have given to him. Yet, they propose to do it without any defined law attaching that penalty to it.

Let us go a little further. The defendant has some guarantees under this Constitution which cannot be taken from him: "In all *criminal prosecutions*

the accused shall have a speedy trial by an impartial jury. He shall have the right to demand the nature and cause of the accusation against him, and to have a copy thereof. He shall not be compelled to give evidence against himself. He shall have the right of being heard by himself or counsel, or both; and be confronted with the witness against him, and shall have compulsory process for obtaining witnesses in his favor. And no person shall be held to answer for a *criminal offense*, unless on indictment of a grand jury, *except* in cases in which the punishment is by fine or imprisonment, otherwise than in the penitentiary, *in cases of impeachment*, or in cases arising in the army or navy," etc., showing that our Constitution and our laws regard impeachment as a *criminal* prosecution for a *criminal offense*. (Constitution of Texas, art. 1, sec. 10).

The points which we have discussed have seemed so clear to me, that I sometimes fear that I have not been able to impress the ideas as clearly upon others.

What is the power of the Senate to sit as a Court of Impeachment? or rather I should say, what is this power of this Court of Impeachment? because it is no longer a Senate. I have heard suggestions in regard to the inherent power of the Senate. To my mind, such suggestions are ridiculous. This High Court of Impeachment is no longer a Senate, but it sits here above the Senate, above the executive, above the Legislature, above all other courts. It is the highest criminal court known to the law of our country, and you are sitting here as a court with power to hear and determine, not upon any idea that you may have, but from the law and the testimony, if the testimony should ever be presented. You are here to decide by the law, *the written law*. My idea has always been drawn from the Constitution itself, that all power is inherent in the people, and when this court sits here, it sits as a court of special jurisdiction, with special powers for a special purpose, and for no other. Now suppose, if your Honors please, that you should attempt sitting as a High Court of Impeachment to try an offense such as was cognizable in the district court. Say a man (not an officer) should be guilty of murdering another on the street, you would not have as much jurisdiction as a justice of the peace. You sit to hear and determine special questions especially submitted to you, and nothing else, and the law under which you determine, must be *clear and well defined*. This Constitution, when it was promulgated and became the fundamental law of the land, in article 15, section 2, gave this court power to try certain officials, among others, the Governor, Lieutenant-Governor, Attorney-General, Land Commissioner, etc. Now for what crimes can you try the Governor? The Constitution does not say. The law under it does not say. You may think that is very remarkable, and so it is; but when you come to consider that the question of trying any member of the executive department has never been raised in this State before, it will not seem so wonderful.

Let me refer very briefly to a suggestion made by Judge Story in his splendid argument on the Constitution of the United States. I may hear the question asked, can it be possible that there is no law under which we can impeach the Governor? It is not only possible, it is only probable, but it is a fact, that to-day, under the Constitution of your State, there is no offense laid down under which you could impeach the Governor. There is no offense defined for which you can impeach the Governor, and the Lieutenant-Governor, the Attorney-General and the Commissioner of the General Land Office all stand exactly upon the same footing—they all stand together. You cannot undertake to say that you can sit here as a High Court and impeach the Commissioner of the General Land Office, unless for the same offense you can impeach his Excellency, the Governor. Would you undertake to say that you could impeach the Governor for a mistake that he might make in putting certain lands on the market? Would you undertake to say that you could impeach his Excellency because he made a mistake in awarding a contract, if he should make one?

These are practical questions and are involved in the several constitutions which have been made (the constitutions of Virginia and Massachusetts being the first), and being the instrument in fact to which our fathers looked when they made the Constitution of the United States. Every State has a constitution. Now, for instance, pick up the constitution of Alabama, and

you will find that it authorizes the impeachment of certain officers for certain grave offenses, for instance, treason, bribery, etc. Pick up the constitution of Arkansas and it is about the same way; and go on down the line and you will find that nearly all of the constitutions are the same way, some being one thing and some another; but I will venture the assertion that you will not find a single constitution under which it has ever been undertaken to impeach a State officer unless the crime for which he was to be impeached was either set out in the constitution itself or in law made in pursuance of it. I do not think that you will find anywhere that it has ever been attempted. Mr. Story says this: "In some of the State constitutions no explicit provision is made for the impeachment of the chief magistrate; and in Delaware and Virginia he was not, under their old constitutions, impeachable until he went out of office. So that no immediate remedy in those States was provided for gross malversations and corruption in office; and the only redress lay in the elective power, followed up by prosecutions after the party had ceased to hold his office. 2 Story Const., sec. 811. In those old constitutions of Delaware and Virginia, they placed a chief executive so high that while he remained in office he could not be impeached, for any offense. There was nothing for which he could be impeached and the whole matter was left for redress before the people. Now tell me, under the Constitution of Texas, for what offense he could be impeached. It says you can impeach him, and leaves it to the Legislature to determine the causes. In section 42, article 3, of our Constitution we find this: "The Legislature shall pass such laws as may be necessary to carry into effect the provisions of this Constitution." The Constitution itself is broad enough, provided the law had been enacted under it naming the offenses authorizing an impeachment, and the Constitution, in the section which I have just read, particularly makes it the duty of the Legislature to enact such laws as may be necessary to put this Constitution into effect. The Legislature has never enacted laws under it, except this: We find a section for the removal of certain State officers enacted under that section of the Constitution referring to and literally copying section 2, of article 15, of the Constitution. The next section is 3379, which says that the causes for which he shall be removed shall be set out at length. It leaves it, still not defining what those causes are. The next section provides that notice shall be given. The next, how the vote shall be taken. Then it comes down to how the judges shall be removed.

So the Constitution and laws are both silent when it comes to naming or defining offenses for which an officer of the Executive department may be removed. There is absolutely nothing in the Constitution or in the law prescribing the offense for which he may be removed. Can you undertake to remedy that? Can you undertake to decide by what the law *ought to be*? Can you undertake to decide important rights by what the Constitution *ought to be*? It will not do. You must take, and you are compelled to take it, as it is. It is well enough for us to understand as we go along how far a court can go. In the case of Baker vs. Chisholm in the 3rd Texas report, on the question of the establishment of courts and their powers and jurisdiction, I desire to call your Honors' especial attention to the law that when a court is created and given a limited jurisdiction, that court is confined strictly to the terms of its power as laid down in the law. The court cannot reason its powers out by intendment; it cannot reach beyond the power especially given and conferred. This is an opinion by Judge Wheeler on an appeal from the District Court dismissing an appeal from a County Court. It appears that an election was held under the act of 1848 to locate permanently the county seat of DeWitt county. The litigation came up over that. Subsequently the County Court took cognizance of the controversy between the friends of the two places and decided that Clinton was the legally elected seat of justice of the county of DeWitt. Now the Constitution and laws had given to the County Court a certain jurisdiction to hear and determine questions of *elections of officers*. That court came to the conclusion that under the power to hear contests for election of *officers* they had the power and right to hear and determine a contest in an election for a county seat. Judge Wheeler said no. He said: "Courts established by law cannot transcend the jurisdiction given by the law of their creation."

Their powers cannot be enlarged by intendment so as to embrace objects not directly expressed in the law.

Your Honors, in this High Court, are confined strictly to the powers conferred. You may hear and determine any question of impeachment for any offense laid down in the law, that is, whenever there is such an offense created. The Executive may be tried and removed; you may try him for a known and defined offense, and for nothing else. The law has not said that there is any offense for which the Executive may be tried and removed or for which the Commissioner of the Land Office may be tried and removed. Then how are you going to reach out and take for granted that which is not here. Judge Wheeler says you can not reach it by intendment. You must have it by positive law, because this is a court of special and limited jurisdiction and you can not go beyond the powers which are conferred.

The same proposition is laid down later in the 28th Texas, in the case of Cowan v. Nixon, in an opinion by Judge Willie, in which he refers to this case in the 3rd Texas, emphasizes it, and comes to the same conclusion, that "Courts established by written law can not transcend the jurisdiction given by the law of their creation." This honorable court is a court created by the Constitution and the laws, and we have no offense defined or even suggested for which you could try the Governor, the Lieutenant-Governor, the Attorney-General or the Commissioner of the General Land Office. It simply is not here, and in the language of Judge Story, when it is not here, you must let the people take care of that. It is a matter that is as yet with the people, and until their law-making power (not inherent power in the Senate) acts, there is none. The Senate has certain power as a Senate to assist in making laws, and by the concurrence of the other house and the Governor to make laws—not otherwise. So far as the inherent power of the Senate or a High Court of Impeachment to make an offense, and then to punish it, Judge Storey says: "The idea is monstrous."

There are certain rules of evidence, certain rules of construction, in which the common law may be invoked, but as stated in the third article of our Penal Code, when you come to our criminal statutes, the crime must be clearly defined by our written law, and you can not invoke common law, or law from any foreign country whatever. We have the decisions of our own State which give us some light in the construction of this Constitution. We have a statute which defines official misconduct, as applied to district and county officers, and every time you read the statutes, you will find the sign-board up in great letters: "THIS APPLIES ONLY TO THE COUNTY AND DISTRICT OFFICERS."

Let us see; referring to article 3390, chapter 2, Rev. Stat., removal of certain county and district officers: It says: "All district attorneys, county judges, commissioners and county attorneys, clerks of the District and County Courts, single clerks in counties where one clerk discharges the duties of both district and county clerk, county treasurer, justices of the peace, etc., and all other county officers now or hereafter existing by virtue of either the Constitution or laws, may be removed from office by the judges of the District Court." (Now, for what? Mark you, it applies to them alone.) "For incompetency, official misconduct, habitual drunkenness or drunkenness not amounting to habitual drunkenness, as hereafter defined in this chapter."

Why is it they did not apply that to the Governor or to the Lieutenant-Governor or to some other great officers of the State?

Simply because the law-making power did not see fit to apply these moral offenses to the removal of the higher officers. Yet it applies to district and county officers.

Let us go on a little further. They say under this statute: "By incompetency, as used in this title, is meant gross ignorance of official duties, gross carelessness."

Article 3393. "By official misconduct, as used in this title," (with reference to what?) "*with reference to county officers*" (not other officers; not State officers) "is meant any unlawful behavior in reference to the duties of his office."

Then it goes on to define what drunkenness is as set out in this title, "*as applied to county officers*," but not as applied to State officers.

These articles and these chapters have no reference whatever to higher

State officers, and there is only one class of State officers for which direct provision has been made, and they are the judges of the different courts, but it does not include the judges of the Courts of Civil Appeals recently created nor of the Court of Criminal Appeals. By special enactment they do include the Criminal Courts in Houston and Galveston, but nowhere else. So you see they lay down the grounds on which judges can be removed by address, and why is it that in the Constitution they say that those officers can be addressed out for those reasons? There are some things I would like for you to notice especially in this connection. Section 8, Article XV: "The judges of the Supreme Court and Court of Appeals (as used then. You know we have different designations now: one is the Court of Criminal Appeals and the other the Court of Civil Appeals) shall be removed for wilful neglect of duty." They lay down specifically, as applying to these judges, how you can address them out, and this is significant. It states the causes for which you can address them out: "For incompetency, habitual drunkenness, oppression in office" (now listen) "or other reasonable cause *which shall not be sufficient ground for impeachment.*"

In other words, neglect of duty is not sufficient ground for impeachment, and hence we can address the judge out for that; incompetency is not sufficient ground for impeachment, and hence we can address him out for that; habitual drunkenness is not sufficient ground for impeachment, and hence we can address him out for that; or for oppression in office, or other reasonable cause which shall not be sufficient cause for impeachment. What does that prove? It proves that Chief Justice Miller, in the clause which I presented to your honorable body this morning, was correct, and that impeachment was a hundred ton gun, which was only intended to be fired at high officials and for high crimes.

Now you have a right to reason from this. I take it for granted that I address a reasonable court, and if it had been intended that the Governor, or Lieutenant-Governor, or Attorney-General, or Commissioner of the Land Office could have been impeached for one of these offenses, it would have been easy to have said so. Or if it had been intended that a higher grade of offense was meant, they could have said that, but they have not said anything upon that subject, and there is no written law of this State defining the cause for which one of these officers can be removed—none whatever.

Now, I know that my friends are learned in the law, and will try to invoke the common law in the face of these statutes and this Constitution. They cannot do it successfully; they cannot reach it. What was the intention of that Constitution? The intention was that the Legislature, if the occasion arose, or if they saw proper at any time, could make a law defining for what causes these executive officers could be removed. Having failed to do that, there is nothing upon which to remove them.

Now let me refer very briefly to a few adjudicated cases, growing out of these sections of the law, because they are the only ones we have any adjudications upon in this State; those sections of the law which apply to county and district officers. I want to show you how our courts have determined what was intended. I want to show you how our courts have looked upon the question of official misconduct as applied to these officers; because, while it does not apply directly to my client, yet it applies directly to that statute, and I invoke it as argumentative upon that point. I contend that there is no law upon the statute book defining an offense upon which he can be removed—none whatever.

In 1873 the State Treasurer of Texas left the State. The Governor concluded that he had the power to declare the office vacant or forfeited and to appoint another, which he did. The question came up on a contest for that office. The Supreme Court passed upon the rights of the party holding the office. And these rights are sacred. When a man goes before a people, presents himself for an office, is heard by the people, and by their suffrages has become their officer, and has qualified, then he has a vested right to his office. It is no longer held by an inchoate title, but it is a right, a vested right, which the law gives him as soon as he has become qualified. The Supreme Court says: "Section 16 of the 1st article of the Constitution reads thus: 'No citizen of this State shall be deprived of life, liberty, property or privileges, or in any manner disfranchised, except by due course of the law of the land.' The right to hold and exercise the functions of an office to which the

individual may have been duly elected may be regarded both a property and privilege, and therefore the incumbent can only be deprived of his office in the manner pointed out in the above section of the Constitution." 39 Texas, p. 11.

The Supreme Court, in a lengthy opinion, after fully reviewing the authorities, held that the Governor had no right to take this question into his hands and declare a forfeiture of the office, but that the regular incumbent was entitled to his office, and they restored him.

In the case of Fladen v. State, 56 Texas, 102, which is cited for the purpose of showing you that our present court looks upon the question in the same way, it was held that office is a franchise in a certain sense, and the right to the same never vests until the person has been elected and has fully qualified, and thereby becomes entitled to receive the office, and then that he can only be deprived of it by due process of the law of the land. This question again came up in the case of Davis v. State, 35 Texas, 125, appeal from Henderson county, and involves the manner in which these offices are held, and the absolute right which a man has in them. The court say: "While we recognize the authority given by the Constitution to judges to remove sheriffs for cause, yet we must also admit the fact that the power is an extraordinary one, to be executed out of the usual course for the administration of law, and should therefore never be called into operation except in cases of great necessity, and for clear and manifest cause; and even then, with great caution and in strict conformity with the authority given." Now, the statute lays down strictly what these causes for the removal of a sheriff are and the Supreme Court says that when the court removes one, it must hold strictly to the law; it must hold to the spirit and letter of the law—it cannot remove for any general idea of possible guilt, or suspicion of probable wrong. Not for a general idea that he has committed some act wilfully; it must be the violation of some known law and must be *wilfully and corruptly done*. We have several cases where officers were removed for allowing prisoners to escape. Among others, the case of Hatch v. State, 10 Ct. App., 519, tried before the Court of Appeals. The case went up from Falls county. Judge Winkler says: "In Watson's case, it was held by this court, in effect, that an officer cannot properly be held to have forfeited his right to an office, and as an incident, be removed from office, when the offense charged amounted to simple negligence and *involved no moral turpitude*." That was a removal under a case where the statute defined what he could be removed for, defined official misconduct, which offense is clearly set out in the Constitution and in the statute, but still the Court of Appeals says that it must not only be done wilfully, but must *involve moral turpitude*. In other words, that the law never contemplated that an officer should suffer a disgraceful punishment of removal for merely failing to discharge his duty. That if a sheriff guarding a prisoner allows him to escape, unless his negligence is so plain and palpable as to evince wilful corruption and moral turpitude, he cannot be removed.

I refer again to the case reported in the 9 Court of Appeals, the case of Watson v. State. It went up from Falls county; the opinion was rendered by Judge Clark, a great lawyer and a good judge. He says: "Stripped of the unnecessary verbiage, the indictment in this case charges the appellant, as sheriff, with negligently permitting the escape of persons in his legal custody, which offense is a misdemeanor under the law, punishable by fine not exceeding \$1000. Upon conviction his punishment was assessed at fine of \$150. and upon return of the verdict, the court acting under that clause of the Constitution and under that section of the statute which authorizes his removal, under action of the jury rendered judgment removing him from office. He appealed to the higher court. Judge Clark says: "This legislative construction of the Constitution evidently implies that every official shortcoming, upon the part of a county officer, shall not be visited with the heavy penalty of removal, and that only such acts as *involve moral turpitude, or wilful negligence* which borders closely upon the former, shall cause the officer to be condemned as unworthy of public confidence as a repository of a public trust." That is strong. Again, "The refusal or failure or neglect of the officer must be either *wilful or corrupt*, before the State is entitled to his removal upon conviction of a misdemeanor, and not

a mere act of negligence or inadvertence, which may comport with honesty on his part and a reasonable desire to properly discharge the functions of his office." How does that read? Now suppose you had a statute under the Constitution authorizing you to remove the Governor or Commissioner of the Land Office, (there is no such law,) but suppose you had. Suppose you were operating directly under this very statute which is made to apply only to district and county officers. Suppose you were to bring it down, and measure the charges in this case by that law. Would you say that you could entertain these charges? You could not under these articles of impeachment, even if that law applied to general officers of the State, which it does not, because there is nothing in them involving *moral turpitude*. They touch moral turpitude only in very high places, and nowhere charge it. There are about 16 of the articles which charge the Commissioner with having sold certain lands of the State. In some places it is said that he wilfully sold certain lands in certain counties. If he did it at all, he did it wilfully, he could not have done it unwillingly. In another place, it says "erroneously." If you could convict under the law applicable to county and district officers, how are you going about convicting a man for *erroneously* doing something? When the whole thing is boiled down, all of the first 14 charges amount simply to this; that he misconstrued section 22 of that law, and sold lands when he ought not to have sold them, and that fact is well known. Well now, what moral turpitude could there be in that? You must take the pleader according to his plea; you must bring him down to the allegations he has made. There is nothing alleged showing corruption. It will not do to say "wrongfully," but you must show how it is wrongful. Do they allege that the Commissioner received any benefit from it; that he did it for his personal gain? Not once. There is not even a suspicion of that, and I am told that the first report that was made on this subject actually exempted him from any personal moral turpitude in the matter. But I am discussing these questions as they are presented in the plea of indictment, and I say that there is no act alleged setting out or showing in what manner, form, shape or fashion he committed any act, or was guilty of any moral turpitude or gross wilful misconduct. The articles, taken together, show on the face that he was doing the best he could, and, whether he was right or wrong, there is some question of construction both ways. The question was whether section 22 of the law applied to isolated sections, that is to a bunch of sections, cut off from other great bodies of public lands in other counties of the State, or whether it only applied to one single section. The construction of the department in previous years on previous acts by former officials holding the same position, which had not been complained of, he had a right to look to, and has a right to invoke in his construction of the same question. But be that as it may, whether he was right or whether he was wrong, unless it involved moral turpitude, there is no right or power in this High Court to find him guilty of moral turpitude, and strip from him that which the people have given him, to hold for a definite term, in accordance with the Constitution of your State.

A little further. Judge Clark can do some good things, and he did a good thing when he wrote this opinion, and upon this point he is fully upheld all the way through in an opinion by Judge Winkler in the 10 Court of Appeals. Listen at this; see how it reads to you:

"The framers of the Constitution contemplated further legislation regulating removals from office, and conferred an enlarged discretion upon the Legislature in the matter of prescribing causes for removal." (9 Court of Appeals.)

In what branch of it? The discretion rested in the law-making power of prescribing causes. Here the court has called the attention of the law-making power to their rights, to their discretion under the Constitution, to legislate further in regard to the question of removals from office. Yet they have not legislated upon the question of causes of removal of the Executive or heads of these departments, and until they do, until both Houses speak and the Governor speaks, you cannot remove one of these officers.

Now let us go a little further upon that question: There is a case in the 43 Texas, the case of Gordon v. State, which has attracted much attention. It was tried in Guadalupe county. The district attorney filed an application before the court to remove the sheriff. The sheriff asked time to consult

counsel and the court adjourned until that evening. The case was called. Gordon's counsel claimed that he had not been served with notice of charges against him, and court adjourned until following Wednesday, and Gordon was served with a copy of the rule to show cause why he should not be removed from office. He came in, filed his answer and the court removed him, and the question came up for final adjudication before the Supreme Court. Judge Gould, passing upon the question, said: "It has been held, and we think rightly, that this power of removal is not absolute or arbitrary, either as to the manner in which, or the causes for which it may be exercised." Then he goes on to set out how the sheriff was entitled to the rights that any county or district officer has under the law to fully appear and defend himself and hear the causes for which he may be removed. He says finally: "The disability to hold office is part of the penalty affixed by our statutes to certain *infamous crimes*," and the crime must be an infamous one before a High Court could say to the man whom they would impeach: "You can never hold office again in this State." "It is not to be imposed upon any citizen except by authority given by law." It must be clear. The motion to dismiss for want of jurisdiction was overruled, and the judgment made on March 5, 1875, was reversed and prosecution dismissed. Now show me where the Supreme Court of this State has ever allowed the removal of a man from office which the people have given him upon such charges as are claimed here. The law does not define it and the Constitution does not pass upon it, and Judge Story says it was infamous for any body of men or any Court of Impeachment to assume the right when the law is not clear and the authority is not given. I desire a few moments further indulgence while I present a section from one of our greatest law writers, Mr. Bishop: "An act to be punished civilly or even criminally must be wilful and corrupt, not a mere mistake or error." (1 Bishop's Crim. Law, sec. 462.) They propose to hold the Land Commissioner responsible for his mistakes or for his errors. The courts say you cannot do that. It is proposed to impeach a member of the Executive department of the government for a question of judgment. Upon a question of sale, upon a question of lease, upon a question of extension of lease. You cannot do that. It would tear our government to pieces if you should attempt it. To attempt to do this would not only be an infraction of the Constitution, but it would break down that strong bulwark which the law has thrown around our form of government, giving three great pillars, the legislative, executive and judicial. This is a part of the executive. You might as well attempt to strike down the Governor of your State on the same charge. Could you do it? Answer.

I beg to refer particularly, in the light of this Constitution, to an opinion rendered in the 49 Texas, *Trigg v. State*. This is a leading case; this is a great case. The decision was rendered by Chief Justice Roberts, and whenever I come to one of his decisions I feel that a great flood of electric light was thrown upon the question. Here it is: The case went up from Travis county. Trigg was the county attorney of the county, and it was sought to remove him from office. There are a number of charges made against him. They charged him with drunkenness, and with habitual drunkenness, and with colluding with a defendant in a case whereby he was acquitted, and with a number of other acts, and he was removed. He appealed to the Supreme Court, and Judge Roberts takes up all of these questions severally and discusses them. He takes the clauses of the statute and of the different Constitutions and reasons them out, one by one. He lays one over here and another over there, and when he gets through the question is so clear that there can not possibly be any ground to err in regard to it. He takes up and illustrates the clause of the Constitution and the statute under which he was removed, by the clause in article V, section 9, of the Constitution, which authorized the removal of district clerks. I want you to watch his reasoning in regard to that section of the Constitution and apply it to this case. I want you to lay this section of the Constitution down by the side of the clause under consideration. I want you to measure one by the other and tell me what you think of it. Here is the clause in regard to district clerks: "There shall be a clerk of each county, who shall be elected by the qualified voters, to hold his office for two years, subject to removal by indictment or information by a grand jury, and conviction by a petit jury."

There is no clause of the Constitution which says for what he may be removed. Here is a clause of the Constitution under consideration now which says that the impeachment of the Governor, etc., shall be tried by the Senate. For what? It does not say. Here are two clauses of the Constitution, and neither one of them says for what causes an officer may be removed, and Judge Roberts says: "The clause providing for the removal of the district clerk seems to have been copied in all of the Constitutions except that of 1869, from the Constitution of the Republic of Texas without any specific object, *and without specifying the grounds of removal. That clause was itself defective in not specifying the grounds of removal.*" (Id. p. 668.) Then he goes on to show that it had not been for another clause of the Constitution, and for another statute which brings the district clerk in with these other district and county officers, he never could have been removed under the Constitution, because he says it was defective in not stating any grounds of removal.

Now if that clause of the Constitution is defective in not specifying the ground of removal, is section 2 of article 15 perfect when it does not specify a ground of removal? Can any lawyer on earth tell me that he can find an officer guilty under that clause of the Constitution and under the statute, which is merely a copy of it, when it does not specify any causes of removal? This is a plain question upon a plain proposition, and a plain decision rendered by a plain old man, whom we used to call "Old Cob Pipe." He is one of the grandest men that ever lived or died in Texas. We will never appreciate Judge O. M. Roberts until we follow him to the grave. When that is done, his statue will be erected in front of this grand building, as the statue of Marshall stands in front of the capitol at Washington.

Now let us go on a little further. After fully and thoroughly discussing these questions: These opinions were of a character to attract public attention and were all decided not long before the session of the convention in 1876, but it re-adopted this clause, and applied it to all county officers, and as we may reasonably suppose, engrafted upon it what the Supreme Court had held to be essential in its enforcement, the causes for removal, two of which were habitual drunkenness and official misconduct, to be set forth in writing, etc., and until then, until they are amended in such a way as to set out the causes of removal, or until the Legislature, who had the power to do it, had enacted a law setting forth these causes of removal, these sections of the Constitution were absolutely as "a sounding brass or a tinkling cymbal." There was nothing upon which the court could take hold. This condition can be easily remedied by the Legislature now in session passing a law naming the offenses for which the officers named in article 15, section 2, may be impeached, but they can not give it retroactive effect.

In addition to the authorities which I have read, I desire to call attention to the Breckenridge case, reported in the 27th Court of Appeals, which is full and clear upon those questions, but fear that I have already trespassed too long upon your time, and, as far as I am concerned, am ready to submit the question to your Honors.

The charges, as I understand them, are briefly these:

(1.) That the Commissioner sold certain lands, making an erroneous construction of the law. That is charge No. 1 in specifications from 1 to 16.

(2.) That he failed to call on the Attorney-General for his advice. In that, they set out that the question was then and there in his mind uncertain, and that he failed to call on the Attorney-General for advice. It is the greatest difficulty on this earth to be able to get out what is in a man's mind. You can get what is in his pocket, but when you come to get down to his mind that is a difficult thing to do. He may have been doubtful at one time, and at another time it may have been very clear. I have seen the Supreme Court just in that condition. I have seen the Court of Appeals in that condition. At one time they were feeling about in darkness and at another were perfectly clear on the subject. Who ever heard of indicting a man because he was uncertain in his mind how a thing was?

(3.) That he colluded with certain parties to permit them to purchase certain lands. Colluded? How? A collusion may be for various purposes. They do not charge that he wilfully or corruptly colluded with parties for the purpose of cheating or defrauding the State out of these lands for his own benefit or benefiting himself. It would need a clause almost like an

indictment for them to reach a thing of that sort. So I take it that this charge is covered by the other specifications in the charge wherein they have already alleged that it was erroneously done. You cannot fly from one to the other.

(4.) That he permitted certain parties to examine the files after office hours. Is there any moral turpitude in that? Is there any allegation in that charge that the State was defrauded out of one dollar? No. Is there any allegation in that charge that this was corruptly done? No. That any man or set of men obtained an advantage over the State in any manner? No. Then where is the offense, even if you could invoke the question of official misconduct laid down for county and district officers? It does not exist.

(5.) That he leased certain lands to Schaurer Bros. instead of to one Mr. Funk. That is a serious—a solemn charge! Where is the moral turpitude in that? Do they allege or claim that the State was thereby defrauded out of a dollar? If so, why do they not allege it and show how? Not one word of that. Now I am just taking the allegations as they come. I could refer to the answer, but this is merely a question of law. It involves no moral turpitude; it is no statement of a charge against a man for which they seek to remove him from the high office which the people have given him, and for which your Honors might adjudge that he could never hold office again. It is upon such charges as this that they propose to base the prosecution.

(6.) That he changed the classification of certain timber lands upon the report of one Mr. Kellie! That is terrible, isn't it? What kind of a man is Mr. Kellie? They do not allege that he is a bad man; they do not allege that he is such a man as would not give accurate information; they do not allege in any particular that there is any moral turpitude. It is useless to say merely that he corruptly did so. How? In what did the corruption consist? For his own benefit? It don't say that. Did he get one dishonest dollar out of it? They do not say that. Where is the offense under the laws of the State of Texas for which they propose to take away this great right?

(7.) Here is a charge that is fearful! That he made a wrong memorandum on a lease contract with H. & J. W. Snyder, by marking, in pencil, on the back of the lease contract, that it was paid to a certain time. They do not even state that that lease contract was in existence at that time. I am told that it was not; that it was an old one. They do not even allege that it was a valid and subsisting lease contract. Was not that terrible? That he got hold of a lease contract, an old one, and put down on it a pencil memorandum that it was paid to a certain time? Do they say that that contract was even in existence at that time? No. "But it is terrible! It is awful! It is awful!" (to use the expression of one of my friends) that an officer of the State, under a \$50,000 bond, who is responsible with his bondsmen for every act, should write upon a piece of paper, with a pencil, those words.

That is terrible! Now, gentlemen, I refer to these things only to show you that if the question was brought down to the county and district officers, which you can not do, you can not convict, you could not entertain these articles of impeachment.

(8.) That he wrongfully extended a lease to H. & J. W. Snyder. Did the State lose any money by that? Do you allege that the State lost money by that? Was there, in truth and fact, any discretion under this statute lodged in the Commissioner of the Land Office? Who has the power to make and extend leases by law? Who has the authority? Why it used to be lodged in the Land Board, a great, cumbrous Land Board headed by the Governor and the Attorney-General and several others, but the Legislature repealed that law and left the Commissioner of the General Land Office under a heavy bond to administer these laws, giving him certain discretion. He is responsible to the State upon his bond, responsible under his discretion, but not liable to impeachment upon a matter that rests merely within his discretion.

Again, and the last. That he asked William Bramlette to make a wrong certificate to a certain map. What use was to be made of the map? They do not tell you. How was the State to be defrauded by that map? They do not tell you. In what way does that map affect the question? We are not informed. But he asked the chief clerk

to make a false certificate to it. Well, if you were going to sit down to draw an indictment against a man for forgery, would you allege it on such flimsy, slender threads as that? No. The State is represented here by able, distinguished and learned gentlemen. Why did they not draw articles for some tangible offense? Because they could not have gone further than they did under the facts they had to work on. The presumption is that they went just as far as they dared go, because they are all fine lawyers. They knew what they were doing. If it had been a fact that the State of Texas had lost or was about to lose important interests by reason of his acts, or that there was under it any great moral turpitude, these gentlemen would have alleged it.

And so it is with all these charges all along the line. There is absolutely nothing in them. Your Honors have no right, as the law stands, to inflict a penalty under that clause of the Constitution, and even if you had, on these charges, if you were trying him as a district or county officer, you could not find official misconduct in them.

I know that the relators are able and learned in the law, and that they will present their side from every possible standpoint, but I desire to return my thanks to the Court for the very kind and considerate hearing which you have given our side, and I ask you when you go out to deliberate to examine closely our Constitution and the decisions of the Supreme Court and Court of Appeals to which I have referred, and I shall leave the result with you.

In conclusion, I beg you to consider the decisions of the Supreme Court of the United States in *United States v. San Jacinto Tin Company*, 125 U. S. Rep., 274, and of *Blum v. Looney*, 69 Texas, p. 1, and a long line of decisions, both Federal and State, in which it is held that a purchaser of lands from the State or government is bound to take notice of the law under which the land is sold, and if he is not such a purchaser as the law contemplates, he procures no title and the contract of sale may be canceled. It is under this principle that the State has recently recovered over half a million acres of land from the railroads; some of it patented land, illegally granted to them for the construction of sidings and switches. These certificates were granted by the different Governors and Land Commissioners of the State from 1854 to 1889, with the exception of perhaps one Governor, and embrace, in all, nearly a million and a half acres. These certificates were illegal, and have been so held by our Supreme Court, and yet they were issued by our Democratic Governors and Land Commissioners from 1854 down. It was not only a mistake, it was a *blunder*, and yet who has ever heard of a proposition to impeach these honest officers for their erroneous construction of the law? Such a proposition would be *monstrous*; and yet learned gentlemen tell us they can impeach the present Land Commissioner if *he* has erroneously misconstrued the law. Surely, such an argument can find no lodgement in the breasts of honest judges, who are stripped from all prejudices, and who sit here "to try out the true intendment of the law."

The honor, the character, the reputation, the future, the family, the *all* of my client are now in your hands. Deal with them justly under your solemn oaths as judges of this High Court. I have endeavored to place him before you, as an honest official of this great State, holding in his hands a sacred trust placed there by the people of Texas. He stands upon the impregnable rock of the Constitution and says that he has done no wrong. He holds up the shield of law and justice and says he has proved true to his trust.

"Truth needs no flowers of speech."

At the conclusion of the above, Hon. T. S. Smith, for the managers, stated that in view of the fact that numerous authorities had been cited to which the prosecution desired to refer in order to present its argument systematically, he, therefore, asked that the court adjourn to its next regular hour of reconvening.

On motion of Senator Lewis, the court adjourned subject to the call of the Senate.

SENATE CHAMBER, AUSTIN, TEXAS, April 25, 1893.

The High Court of Impeachment convened as per call of the Senate.

Quorum present.

President Pro Tem. Kearby presiding.

Hon. Henry W. Lightfoot, with the consent of the prosecution, offered some additional authorities in behalf of the defendant.

Hon. T. S. Smith, of the managers, followed in behalf of the State.

AFTERNOON SESSION.

Court met pursuant to adjournment.

Quorum present.

President Pro Tem. Kearby presiding.

Hon. L. T. Dashiell addressed the court in behalf of the State as follows:

Mr. President and Senators:

Never before in my life have I felt the weight of inexperience as forcibly as now. Selected as one of the managers of a case presented by a High Court of Inquest; the representative of the House of Representatives, an honorable body; discussing legal questions in the presence of respondent's counsel, gentlemen whose intelligence sparkles; and addressing a court which has been called into existence, not by a law enacted in the ordinary course of legislation, but by that higher law which regulates all legislation, the Constitution;—in view of these facts and by these extraordinary circumstances profoundly impressed, I can but beg your indulgence while I present a few thoughts upon one of the points at issue. And in addressing "Your Honors," I would not be looked upon as a prosecutor in the common acceptation of that term; rather would I be a seeker after the truth, an investigator in a matter of great importance.

If W. L. McGaughey, under the law and evidence, is innocent, my sympathy for mankind in general, my earnest desire for purity in office, and my fealty to the party which has honored him in past, would prompt me to herald his innocence to the world.

If, on the other hand, under the law and the evidence, this respondent is guilty of the charges heretofore set forth, the love that I bear for my State, the sense of duty that I feel as an official, and all of the instincts of justice and decency, will prompt me to demand that the accused be stripped of the habiliments of office, and that the manifesto be sent forth that he is unworthy of public confidence.

I will say further, that this trial calls for the strictest disinterestedness on the part of the judges and counsel. It is true that respondent's position, reputation and happiness are at stake, but far more important than these personal considerations, are the fundamental principles involved, principles that lie at the very bottom of organic law, and involve the purity and perpetuity of our government.

To the articles of impeachment presented to this court by the House of Representatives in the name of the people of Texas, respondent's counsel has filed two general demurrers, as follows, to-wit:

"And now comes defendant, W. L. McGaughey, in his own proper person, and demurs generally:

"First. To the jurisdiction and power of this High Court of Impeachment under the Constitution and laws of the State of Texas, to receive articles of impeachment against him, to cause him to appear before it and demur, plead or answer to said articles of impeachment, or to any one or more of them, or to put him on trial, or to try him, or to render or enter or record any judgment against him, because he says that sections 1 and 2, article 15 of the Constitution, as do the laws of the State of Texas, fail to define any crime or offenses for which an impeachment will lie; that said sections and articles of the Constitution are not self-executing, but require legislation to put said sections of said article into operation.

"Second. He demurs to the several, each and all the articles of impeachment presented against him in these impeachment proceedings, because there is not contained in them, nor in any of them, any impeachable matter

under the Constitution and laws of the State of Texas; and because there is no treason, no bribery, no high crimes and no misdemeanor therein alleged against him that are impeachable under the Constitution and laws of the State of Texas; and because there is no matter or thing therein alleged against him evidencing corruption on his part in the administration of the business of the General Land Office of the State of Texas, and manifesting no act on his part, mala in se nor mala prohibita, that subjects him to impeachment under the Constitution and laws of the State of Texas, and of this he prays the judgment of the High Court of Impeachment."

To the second of these demurrers I will devote my attention, leaving the first for the consideration of other gentlemen who will address you.

For the meaning and scope of the second demurrer, I will quote from the speech of respondent's counsel (Lightfoot), so eloquently delivered on yesterday. He says:

"If you find from the laws of the State that he (McGaughey) is guilty, as charged, and that you have a law fixing a penalty against him, then you will have but to enforce it; but if on the other hand you find that there is no prescribed law which he has violated, or you find that as a court there is no law prescribing a penalty under which, under the definition of crime, you can find him guilty, you must say that he go hence acquitted."

It at once appears that the distinguished gentleman takes the unqualified position that "an impeachable offense must be an indictable offense." The refutation of this theory involves the discussion of the necessity and purposes of impeachment.

Ours is a representative government. At stated times, the people in their sovereign capacity designate certain of their number to act as their agents in matters of legislation, and in the execution and adjudication of laws. Certain discretionary powers are granted to these agents, and they are responsible to the people for their legitimate use, or illegitimate abuse. The restraints thrown around an officer in the exercise of these discretionary powers are the statutes which define his official functions, "his personal sense of duty, the force of public opinion, and the transitory nature of his seat." If, however, as is sometimes the case, these limitations are of no avail, and such an officer exercises his discretionary powers in a wilful, rash and corrupt manner, the people, for self-protection, must have an extraordinary method by which they can speedily dispose of so dangerous a servant. Hence, the necessity for high courts of impeachment. In the necessity for such a procedure, we find its purpose. We indict and convict criminals under our statutory law for the purpose of punishing and reforming them. We arraign an unfaithful public servant in a high court of impeachment, not to punish and reform the individual, but to protect the people; and after the people have been protected, if he has done anything that the statutory law makes penal, he may be turned over to the ordinary courts of the country for punishment and reformation.

See section 4, article 15, of the Constitution of Texas, which reads as follows:

"Judgement in cases of impeachment shall extend only to removal from office, and disqualification from holding any office of honor, trust, or profit under this State. A party convicted on impeachment shall be subject to indictment, trial and punishment, according to law."

Hence, I claim that, in every necessity and purpose of impeachment, and in the inference drawn from the foregoing constitutional provision, that an impeachable offense may be, not must be, an indictable offense, we find a sufficient denial of respondent's demurrer. To the support of this conclusion, I bring to bear eminent authorities. In the History of the Constitution by Curtis, pages 260 and 261, will be found the following:

"Among the separate functions assigned by the Constitution to the House of Congress, are those of presenting and trying impeachments. An impeachment, in the report of the committee of detail, was treated as an ordinary judicial proceeding, and was placed within the jurisdiction of the Supreme Court. That this was not in all respects a suitable provision, will appear from the following consideration: Although an impeachment may involve an inquiry whether a crime against any positive law has been committed; yet it is not necessarily a crime; nor is there any necessity in the case of crimes committed by public officers, for the institution of any special

proceedings for the infliction of the punishment prescribed by the laws, since they, like all other persons, are amenable to the ordinary jurisdiction of the courts of justice, in respect of offenses against positive law. The purposes of an impeachment lie wholly beyond the penalties of the statute or the customary law. The object of the proceeding is to ascertain whether cause exists for removing a public officer from office.

"Such a cause may be found in the fact that either in the discharge of his office, or aside from its functions, he has violated a law, or committed what is technically denominated a crime. But a cause for removal from office may exist where no offense against positive law may have been committed, as where the individual has, from immorality or imbecility, or maladministration, become unfit to exercise the office. The rules by which an impeachment is to be determined are, therefore, peculiar, and are not fully embraced by those principles or provisions of law which courts of ordinary jurisdiction are required to administer."

Respondent's counsel will please note that in the opinion of this eminent legal authority an impeachment may involve an inquiry whether a crime against any positive law has been committed; yet it is not necessarily a trial for crime.

He assumes unqualifiedly that the purpose of impeachment is primarily to protect the public, and not to punish the offender.

Your honors will pardon me for referring to another authority of great weight upon this point. Pomeroy, in his work on the Constitution, page 482, develops with force and clearness the position of respondent, and that of the relators. In discussing the lawful grounds of an impeachment, he says:

"Two answers have been given to this question resting upon two opposed theories of construction. One theory, maintained with great ability, both upon principle and authority, by a large school of public writers, confines the operation of impeachment clauses within very narrow limits. According to it an impeachment can only be preferred against an officer of the United States on account of some indictable offense which he has committed. Assuming this general doctrine to be correct, and taking into account the further special rule that all crimes against the United States must be statutory, the final conclusion is reached that the officer must have been guilty of an offense which had been made indictable by positive law of Congress. This law must have been passed prior to the commission of the criminal act, because a statute subsequent thereto declaring the act penal and imposing a punishment would be an *ex post facto* law and obnoxious to express inhibitions of the Constitution."

"The second theory does not confine the House of Representatives as the accusers or the Senate as the triers within such narrow limits. It regards the process of impeachment as the important personal sanction by which the observance of official duties is secured, as the very keystone by which the arch of constitutional powers is held in place. As the punishment to be inflicted has reference solely to the offender's official position, so the acts for which that punishment was deemed appropriate must have reference, directly or inferentially, to the offender's official duties and functions. Wherever the President or Vice-President or any civil officer has knowingly and intentionally violated the express terms of the Constitution or of a statute which charged him of an official duty to be performed without a discretion; and wherever, a discretion being left, within the bounds of which he has an ample choice, he exercises that discretion in a wilful and corrupt manner, or even in a rash and headstrong manner, unmiadful of the ruinous consequences which his acts must produce, he is impeachable, and it makes no difference whether the act has been declared a felony or a misdemeanor by the criminal legislation of Congress or was regarded as such by the common law of England. Indeed, in this view the officer might be impeachable for very many breaches of public duty which it would be impossible to treat as ordinary crimes and to define in the statute books as indictable offenses. Thus the President has the power to grant pardons, uncontrolled and uncontrollable by Congress. Every pardon which he issues is valid, whatever be his motive and intent. It will be absolutely impossible for the Legislature to make the conferring of a pardon in any specified case or manner a crime for which an indictment would lie."

WHAT NOW IS THE AUTHOR'S CONCLUSION ?

I call your especial attention to his judgment, for it demonstrates that his grasp of the subject was complete:

"We must adopt the second and more enlarged theory, because it is in strict harmony with the general design of the organic law, and because it alone will effectively protect the rights and liberties of the people against the unlawful encroachments of power, narrow the scope of impeachment, and the restraint over the acts of rulers is lessened. If any fact respecting the Constitution is incontrovertable, it is that the convention which framed, and the people who adopted it, while providing a government sufficiently stable and strong, intended to deprive all officers, from the highest to the lowest, of any opportunity to violate a public duty, to enlarge their authority, and thus to encroach gradually or suddenly upon the liberties of the citizen."

With what positiveness does this writer of international fame contradict the position assumed by the gentleman on my left. While such views may be detrimental to the welfare of counsel's client, yet, I must insist, your Honors, that the principles so aptly expressed by Curtis and Pomeroy are in strict accord with the highest conception of a good, a pure, and a stable government.

But I must hasten on. Officers and private individuals are alike amenable to the statutory laws of our county. Official position protects no man from prosecution for any violation of the Penal Code; but when a citizen, having been lawfully designated, assumes the duties of an office, he is amenable not only to statutory law, but also to the people for the faithful and efficient discharge of the requirements of the trust committed to him. Upon such a one's shoulders are placed official responsibilities in addition to those attending him in his capacity as a private citizen. If he is derelict in the performance of his duties, in so far as such dereliction is criminal, he may be indicted, and so far as it damages and endangers the body politic, he is subject to removal from office by impeachment.

Kent, in his Commentaries, vol. 1, page 308, is clearly in sympathy with this line of thought, and I commend this author to respondent's counsel, if he earnestly seeks the truth. He says:

"In addition to all the precautions which have been mentioned to prevent abuse of the executive trust in the mode of the President's appointments, his term of office and the precise and definite limitations imposed upon the exercise of his power, the Constitution has also rendered him directly amenable by law for maladministration. Inviolability of any officer of the government is incompatible with the republican theory as well as with the principles of justice. The President, Vice President, and all civil officers of the United States, may be impeached by the House of Representatives for treason, bribery, and other high crimes and misdemeanors, and, upon conviction by the Senate, removed from office. If then, neither the sense of duty, the force of public opinion, nor the transitory nature of the seat, are sufficient to secure a faithful discharge of the executive trust, but the President will use the authority of his station to violate the Constitution or law of the land, the House of Representatives can arrest him in his career, by resorting to the power of impeachment."

Mark the expression, your honors: "Inviolability of an officer of the government is incompatible with the republican theory as well as with the principles of justice." I call upon respondent's counsel, who spoke so eloquently and fervently on yesterday, to reconcile this broad declaration, uttered by the great master of American jurisprudence, to the doctrine set forth in the general demurrer, and to the alleged acts of the Commissioner, which are admitted to be true in this preliminary discussion. Charged with a wilful and an intentional violation of the letter and spirit of the law governing his department; arraigned before this honorable court on a count alleging fraud and collusion in the disposition of the heritage of the children of Texas, this respondent, forgetful of the nature of the high trust committed to his care and its attending responsibilities, pleads that he is not impeachable, because he is not technically indictable.

I submit, your honors, that any effort to define absolutely those official offenses for which an officer can be impeached would be attempting the impossible. The ingenuity of irresponsible officers, and the wide scope of

official offenses make definition impossible, and the limits of impeachment must be left to the patriotism and sound discretion of the court constitutionally designated to try such cases. Only by such a jurisdiction can the real purpose of an impeachment be accomplished. Limit a court of impeachment to indictable offenses and you destroy its effectiveness.

Mr. Story, in discussing what are the functions to be performed in impeachment, says:

"The offenses to which the power of impeachment has been and is ordinarily applied as a remedy, are of a political character. * * * * * What are aptly termed political offenses, growing out of personal misconduct or gross neglect, or usurpations, or habitual disregard of the public interests, in the discharge of duties of public office. These are so various in their character and so indefinable in their actual involutions, that it is almost impossible to provide systematically for them by positive law. They must be examined upon very broad and comprehensive principles of public policy and duty. They must be judged of by the habits and rules and principles of diplomacy, departmental operations and arrangements; in short, by a great variety of circumstances, as well those which aggravate as those which extenuate or justify the offensive acts; which do not properly belong to the judicial character in the ordinary administration of justice, and are far removed from the reach of municipal jurisprudence."

Judge Lawrence, an eminent jurist of Ohio, concurs in the opinion of Judge Story in an exceedingly able paper upon the same subject matter. He says:

"It would certainly seem clear that impeachments are not necessarily limited to acts indictable by statute or common law, and that it would be impossible for human prescience or foresight to define, in advance, by statute, the necessary subjects of impeachments.

"The Constitution contemplated no such absurd possibility. It may be said there is danger in placing in the Senate a power so undefined.

"It was because of the danger that the power has been limited, as it has, in the Constitution, and experience has shown that the limitation is more than sufficient. The whole system of common law crimes, as it exists in England, and in almost every State in the Union, is the result of a judicial power equally undefined.

"The system of impeachment is to be governed by the great general principles of right, and it is less probable that the Senate will depart from this than that the whole Legislature would in the enactment, or than courts in the establishment of the common law."

To a reasonable lawyer these two quotations would be sufficient, but to make the point doubly sure, I quote from Lord Brougham, an English lawyer of great ability: "Impeachment," says the distinguished legalist, "was a remedy for cases not cognizable by the ordinary jurisdiction."

"The learned Attorney-General has held that no impeachment could lie unless some law was violated; but the opinion was contrary to the doctrine laid down by the greatest writers on the law of impeachment. Lord Coke did not so limit the power of parliament. He regarded this power as most extensive, and in describing it quoted this remarkable expression: 'That it was so large and capacious that he could not place bounds to it either in space or time.' In short, this maxim has been laid down as irrefragable, that whatever mischief is done, and no remedy otherwise be obtained, it is competent for parliament to impeach."

In the face of such authorities as Story, Lawrence, Brougham, and Coke, respondent's counsel can hardly hope to maintain the theory enunciated in the second demurrer.

I will call your attention to the further fact that all executive officers in our State or National governments have certain discretionary powers vested in them by the State or National constitutions.

In many instances these discretiary powers can not be limited by statutory laws. This granted, I ask what protection, under respondent's theory, would the people have when an officer grossly abuses his discretionary powers? The President of the United States by virtue of his authority could wreck and totally destroy our nation's commerce, and at the same time be amenable to no statutory law.

Yet can counsel claim that such an officer, so offending against the well-

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fare of a whole people, could not be held accountable before the bar of a High Court of Impeachment?

Consider for a moment the discretionary powers of the Governor of your State. To him is given the power to pardon every felon within your penitentiaries. Suppose that he, grossly abusing his power, should release every convict now confined and pardon every criminal convicted. In no way could he be indicted under the laws of your State, yet can counsel sincerely claim that he could not be made to answer at a High Court of Impeachment? The very thought of such a predicament is its own refutation.

Granting to the executive officers certain discretionary powers unrestricted by statutory law, the people reserve to themselves the right to evict from office any of their representatives who corruptly, rashly and intentionally seek to debase and injure the public service.

Wharton in his work on Criminal Law, vol. 11, p. 407, throws some light upon this question. He says:

"To subject the superior officers of government, upon whose uninterrupted presence at the helm the safety of the State depends, to indictments for misconduct in office, would be injurious to the body politic; and consequently in such cases impeachment is the sole instrument of penal revision. This principle applies to the superior executive officers of government so far as such officers are elected with discretion, and are the subjects of impeachment; to the Legislature, and clearly to the judges of all courts of record, so far as concerns their judicial as distinguished from their ministerial acts."

Again do I refer to Pomeroy on the Constitution. With extraordinary clearness he approves the position that I here assume, as follows:

"The importance of the impeaching power consists, not in its effects upon subordinate ministerial officers, but in the check which it places upon the president and the judges. They must be clothed with an ample discretion. The danger to be apprehended is from an abuse of this discretion. But at this very point, where the danger exists, and where the protection should be certain, the president and the judiciary are beyond the reach of congressional legislation. Congress can not, by any laws, penal or otherwise, interfere with the exercise of a discretion conferred by the Constitution. Even had the Legislature been clothed with express authority to define and punish crimes generally, they could not make criminal any kind of act which the Constitution permits the president or the judges to do, and subject these individuals to indictment therefor. But in fact, the express authority of Congress to define and punish crime is very limited. If the offense for which the proceeding may be instituted must be made indictable by statute, impeachment thus becomes absolutely nugatory against these officers, and in those cases where it is most needed as a restraint upon the violations of public duty."

What then, your honors, is the conclusion that I draw from all this reasoning and all these authorities? This, and this only: that there is a difference between technical and political crime, and that while a political crime may be a technical crime, it is not necessarily so. Firm in the belief of this proposition, I deny the correctness of respondent's second general demurrer; and I am confirmed in my belief by Blackstone and by Campbell. The latter, in his famous speech in the Chase trial, proceeds as follows:

"The next provision in the Constitution declares that judgment in cases of impeachment shall not extend further than to removal from office and disqualification to hold and enjoy any office of honor, trust or profit under the United States.

"Here the Constitution seems to make an evident distinction between such misdemeanors as would authorize a removal from office and disqualification to hold any office, and such as are criminal, in the ordinary sense of the word, in courts of common law and punishable by indictment. So far as the offense committed is injurious to society, only in consequence of the power reposed in the officer being abused in the exercise of his official functions, it is inquirable into only by impeachment and punishable only by removal from office and disqualification to hold any office; but so far as the offense is criminal, independent of the office, it is to be tried by indictment and is made punishable according to the known rules of law in courts of ordinary jurisdiction. As if an officer take a bribe to do an act not connected

with his office, for this he is indictable in a court of justice only. Impeachment, therefore, according to the meaning of the Constitution, may fairly be considered a kind of inquest into the conduct of an officer merely as it regards his office, the manner in which he performs the duties thereof and the effects that his conduct therein may have on society. It is more in the nature of a civil investigation than of a criminal prosecution. And though impeachable offenses are termed in the Constitution as high crimes and misdemeanors, they must be such only so far as regards the official conduct of the officer, and even treason and bribery can only be inquired into by impeachment so far as the same may be considered as a violation of the duties of the officer and of the oath the officer takes to support the Constitution and laws of the United States and of his oath of office, and not as to the criminality of those offenses independent of the office. This must be inquired into and punished by indictment.

"This position is strongly supported by the mode of proceeding adopted by this honorable court in cases of impeachment.

"You issue a summons to give notice to the accused of the proceeding against him; you do not consider his personal appearance necessary; you issue no compulsory process to enforce his personal attendance, and you pass sentence, or render judgment, on him in his absence.

"But in all criminal prosecutions, compulsory process must issue at some stage of it to enforce the defendant's appearance (unless outlawry in England be considered an exception, which, it is believed, is not resorted to in this country), and his personal appearance is considered absolutely necessary; and in almost every case, he must be personally present when sentence is pronounced against him.

"This construction of the constitutional provision appears to be absolutely necessary to avoid the absurd consequence that would arise from a different construction; that of punishing a man twice for the same offense, which could not have been intended by the framers of the Constitution. The nature of the judgment which you are bound to render, and not to exceed, appears also conclusive on this head. You can only remove and disqualify an individual from holding an office of honor, trust or profit. This can not be considered a criminal punishment; it is merely a deprivation of rights; a declaration that the person is not properly qualified to serve his country. Hence, I conceive that in order to support these articles of impeachment, we are not bound to make out such a case as would be punishable by indictment in a court of law. It is sufficient to show that the accused has transgressed the line of his official duty, in violation of the laws of his country; and that this conduct can only be accounted for on the ground of impure and corrupt motives. We need not hunt down the accused as a criminal, who had committed crimes of the deepest dye, and this honorable court are not authorized to inflict a punishment adequate to such crimes, if they had been committed and could be established."

Your Honors, I have already detained you too long. I close with this proposition: If, as I have attempted to show, there is a difference between technical and political crime, then impeachment is not limited to acts "*mala prohibita*."

Upon this point Mr. Story is exceedingly clear. He says:

"Congress have unhesitatingly adopted the conclusion that no previous statute is necessary to authorize an impeachment for any official misconduct, and the rules of proceeding and the rules of evidence, as well as the principles of decision, have been uniformly promulgated by the known doctrines of the common law and parliamentary usage. In the few cases of impeachment which have hitherto been tried, no one of the charges has rested upon any statutable misdemeanor."

To that matchless lawyer, Judge Cooley, I also appeal. On the subject of impeachment, he speaks as follows:

"The two very effective restraints which the Legislature may interpose to the use of executive and judicial authority are: First, that which consists in its control over their jurisdiction, and, second, the proceeding by impeachment. Much of executive authority comes, not from the Constitution, but from statute, and what is thus given may at any time be taken away. The same is true of the courts. Some of them are purely statutory courts, and may be modified or abolished; all of them derive most of their jurisdiction

from statutes, and whenever this is abused it can be restricted or taken away. But it may also be modified or taken away on grounds of expediency or policy merely. Impeachment is for the purpose of punishing misconduct. By the Constitution of the United States, the House of Representatives has the sole power of impeachment, and the Senate the sole power to try its presentments. When the President is tried, the Chief Justice shall preside, and no person shall be convicted without the concurrence of two-thirds of the members. Judgment in cases of impeachment shall not extend further than to removal from office and disqualification to hold and enjoy any office of honor, trust, or profit under the United States; but the party convicted shall nevertheless be liable, and subject to indictment, trial, judgment and punishment according to law, provided the impeachable offense is also an indictable offense. The President's power to grant reprieves and pardons does not extend to impeachment."

"The offenses for which the President or any other officer may be impeached are any such as in the opinion of the House are deserving of punishment under that process. They are not necessarily offenses against the general laws. In the history of England, where the like proceeding obtains, the offenses have often been political, and in some cases for gross betrayal of public interests punishment has very justly been inflicted on cabinet officers. It is often found that offenses of a very serious nature by high officers are not offenses against the criminal code, but consist in abuses or betrayals of trust, or inexcusable neglect of duty, which are dangerous and criminal because of the immense interests involved and the greatness of the trust which has not been kept. Such cases must be left to be dealt with on their own facts, and judged according to their apparent results."

And now, Mr. President, and gentlemen of this High Court of Impeachment, I submit relator's objections to respondent's second general demurrer, pleading the importance of the case as my excuse for having detained you so long. The eyes of the people of Texas are upon you. Never before in the history of the south has there been a trial approximating in importance the one now in progress. The influence of the accused, the magnitude of the offenses charged, and the prominent position that this case will take as a precedent in future impeachments, all call for the exercise of the highest intelligence and the broadest patriotism. We feel confident that your honors will exercise that fairness and conservatism so becoming a court of discretionary powers, and we will await your decision and abide the result with a consciousness of having honestly discharged the duty placed upon us by the representatives of the people of Texas.

At his conclusion, Senator Imboden sent up the following:

Mr. President: I should like to hear some one of the Board of Managers on the part of the House of Representatives discuss article 3415, of title 66, chapter 2 of the Revised Civil Statutes, in connection with some twenty of the articles of impeachment.

Hon. J. C. Beall then followed in behalf of the State, to-wit:

Mr. President, and Gentlemen of the High Court of Impeachment:

It is safe to say that no member of this court has ever been a participant in a scene more dramatic than this. It is a drama so exciting in its interest, and so commanding in its importance, that not only are the eyes of the people of Texas directed to-day towards the scene, but it will be remembered and pointed out as a precedent for all generations.

A member of the executive department of our government, in whose hands the people of the State of Texas have confidently placed interests of the greatest magnitude and importance, is before us for trial. The Representatives of the people seek to take from him, as no longer worthy of it, that which the people have given. The members of the House of Representatives, to whom was entrusted the responsibility of conducting this prosecution, have been and are duly impressed with the solemnity of the occasion, and with the responsibility of the position, but it has remained for the distinguished counsel for the respondent to seek to inject the threads of comedy into this proceeding by flippantly denouncing the charges that we have presented as insignificant, puerile and silly. I would suggest to the able coun-

sel that they had better beware, lest before the termination of these proceedings, they may wish they had not assumed so much the phase of the tragic.

In the discussion of this question, I wish, to a great extent, to address you through the medium of the most learned and able expounders of the Constitution, for they have wisdom, while I have ignorance; they have experience, while I have inexperience; and they have influence, while I have none.

Upon the proposition contained in the second demurrer of the respondent, that an offense, in order to be impeachable, must also be indictable, there arise many grave and important considerations.

Is it true that impeachment in its nature is a criminal proceeding, or is it, on the other hand, a grand inquest by the people for the purpose of removing public servants for their own protection? Is its purpose the punishment of those who have committed crime, or is it not rather for the safeguard and protection of the people?

The counsel for respondent on yesterday predicated his argument on the assumption that impeachment is for the purpose of punishing crime. In refutation of this, and as a vindication of its true purposes, I quote from the "Principles of Constitutional Law," by Mr. Cooley, page 158: "Impeachment is for the purpose of punishing official misconduct." In order for the position of the counsel to be in harmony with Judge Cooley, it is necessary for him to sustain the contention that misconduct of an officer is a crime. I take it for granted that no member of this honorable court will for a moment consider such a proposition as valid and reasonable. The word misconduct is a word of ordinary use and ordinary signification. There does not cling to it any technical meaning. It of necessity means *wrong* conduct, and not *criminal* conduct. It means ill behavior, and not of necessity some act in defiance of and forbidden by the penal statutes of the State of Texas. If Mr. Cooley is correct in his definition of the nature of an impeachment, then the counsel for respondent must be incorrect or the distinction between misconduct upon the one hand and criminal conduct upon the other is not well defined and easily understood.

Again I quote from the speech of Mr. Bayard, in "Wharton's State Trials," page 263. Mr. Bayard, it is true, was counsel in this case, and interested in its result, but he was a lawyer of such renown, so learned in the history of the Constitution of our government, that his opinion is nevertheless entitled to great weight and authority.

Mr. Bayard says: "I have but one observation more to make on this point, and that is, that impeachment is a proceeding merely of a political nature. It is not so much designed to punish the offender as to secure the State. It touches neither his person nor his property, but simply divests him of his political capacity."

Again, counsel for defendant is so unfortunate as to act in conflict with the position assumed by this eminent authority, for while counsel maintains that impeachment is criminal in its nature, Mr. Bayard asserts that it is only political in its nature. Again, Mr. Bayard says that its purpose is not for the punishment of the offender but for the protection of the State. On the other hand counsel maintains that being a criminal action, if the results are adverse to the respondent, it must be in the nature of a punishment for a crime committed. I quote again from the speech of Mr. Campbell, who was counsel in the proceedings of impeachment against Judge Chase: "The Constitution seems to me to make an evident distinction between such misdemeanors as would have been cause for removal from office and disqualification from holding office, and such as are criminal in the ordinary sense of the word in common law and punishable by indictment; for as the offense committed is injurious to society only in consequence of the power reposed in the officer being abused in the exercise of his official functions, it is inquirable into only by impeachment and punishable only by removal from office and disqualification to hold any office; but so far as the offense is criminal independent of the office, it is to be tried by indictment and is made punishable according to the known rules of law in courts of ordinary jurisdiction. As if an officer takes a bribe to do an act not connected with his office, for this he is indictable in a court of justice only. * * * * * Impeachment, therefore, according to the Constitution, may be fairly considered a kind of inquest into the conduct of an officer merely as it regards his office, the manner in which he performs the duties thereof,

and the effects that his conduct therein may have on society. It is more in the nature of a civil investigation than of a criminal prosecution. And although impeachable offenses are termed in the Constitution high crimes and misdemeanors, they must be such only so far as regards the official conduct of the officer, and even treason and bribery can be inquired into only by impeachment so far as the same may be considered as a violation of the duties of the officer and of the oath the officer takes to support the Constitution and laws of the United States and of his oath of office, and not as to the criminality of those offenses independent of the office. This must be inquired into and punished by indictment. This position is strongly supported by the mode of proceeding adopted by this honorable court in cases of impeachment. You issue a summons to give notice to the accused of the proceedings against him; you do not consider his personal appearance necessary; you issue no compulsory process to enforce his personal attendance, and you pass sentence or render judgment on him in his absence. But in all criminal prosecutions compulsory process must issue at some stage of it to enforce the defendant's appearance, (unless outlawry in England be considered an exception, which, it is not believed, is resorted to in this country), and his personal appearance is considered absolutely necessary, and in almost every case he must be present when sentence is pronounced against him. This construction of the Constitutional provision appears to be absolutely necessary to avoid the absurd consequence that would arise from a different construction—that of punishing a man twice for the same offense, which could not have been intended by the framers of the Constitution. * * * * Hence, I conceive that in order to support these articles of impeachment we are not bound to make out such a case as would be punishable by indictment in a court of law. It is sufficient to show that the accused has transgressed the line of his official duty in violation of the laws of his country, and that this conduct can only be accounted for on the ground of impure and corrupt motives." So the counsel for respondent must come in conflict with this learned jurist.

Mr. Abbott, in defining impeachment as applied to an officer, thus speaks: "As applied to an officer, these words designate a proceeding involving an accusation, trial and judgment for misconduct which renders removal from office proper. The proceeding by impeachment differs from indictment in important respects. It relates more particularly to official misconduct, or offenses for which the person should no longer hold office; hence the charges which will warrant impeachment are not necessarily the same with those which will sustain an indictment. The accusation in impeachment is preferred and prosecuted by some branch of the political power, instead of by the grand jury and district attorney. It is tried, in most jurisdictions, before a quasi political tribunal, instead of in the courts of justice, and it results, if sustained, in a decision the chief element of which is the removal of the officer from his office, though by positive law a sentence of disqualification from any future holding of office may in many cases be added."

From these authorities you are not compelled to resort to inferences to conclude that impeachment is not limited in its operations to those offenses which are in violation of the penal statutes of the State, for they state in most positive terms that it need not be an indictable offense; that it need be only official misconduct, or for such misbehavior in office as renders the removal of the officer necessary for the public good.

In speaking of the question of impeachment, I find the following quotation occurs in No. 65 of the *Federalist*: "The subject of its jurisdiction are those offenses which proceed from the misconduct of public men, or in other words, from the abuse or violation of some public trust. They are of a nature which may with peculiar propriety be denominated political, as they relate definitely to injuries done immediately to the society itself. * * * What, it may be asked, is the true spirit of the institution itself? Is it not designed as a method of national inquest into the conduct of public men?" This quotation is from the pen of Mr. Hamilton, who was so familiar with all the facts and details connected with the framing of the Constitution of the United States, a man so learned in the constitutional history, and deeply versed in law, that, whatever opinion we may have of his political faith, we must bow to his authority upon questions constitutional in their nature.

I next quote Mr. Charles Sumner as authority upon this question. Mr.

Sumner says: "As we discern the true character of impeachment under our Constitution, we shall be constrained to confess that it is a political proceeding before a political body, with political purposes, that is founded on political offenses proper for the constraint of a political body, and subject to a political judgment only. Even in cases of treason and bribery the judgment is political, and nothing more. If I were to sum up in one word the object of impeachment under our Constitution, meaning that which it has in view, and to which it is practically limited, I would say, *expulsion from office.*" If Mr. Sumner had framed this definition in agreement with the contention of counsel, it would have been that impeachment is a criminal proceeding before a criminal court, with criminal punishment as its purpose, and that its sole object would be the punishment of the offender.

I quote from Miller on the Constitution, where he says: "Impeachment is what physicians call heroic medicine, an extreme remedy, proper to be applied against an official guilty of political crime." The counsel for respondent has quoted from this authority, but omitted this part of the quotation. Unfortunately for the counsel, Mr. Miller defines impeachment as being a remedy to be applied to officials guilty of political crimes, and not to officials guilty of penal statutes alone.

In thus speaking of political crimes, Mr. Sumner and Mr. Miller do not use the word political in a narrow, sectional and partisan sense, but in that broad, higher and truer sense of the term as applied to matters of government.

In regard to the purposes of impeachment, I quote from Wharton's State Trials, p. 313: "It seems to me on the contrary, that the power of impeachment has two subjects: First, to remove persons whose misconduct may have rendered them unworthy of retaining their office; and secondly, to punish those offenses of a mere political nature which though not susceptible of that exact definition whereby they might be brought within the sphere of ordinary tribunals, are yet very dangerous to the public. These offenses, in the English law, and in our constitutions, which borrowed its phraseology, are called high crimes and misdemeanors."

Mr. Curtis, in his history of the Constitution, says: "The purposes of an impeachment lie wholly beyond the penalties of the statute or the customary law. The object of the proceeding is to ascertain whether cause exists for removing a public officer from office."

I quote now from an able article written by Judge Lawrence:

"It is absurd to say that impeachment is here a mode of procedure for the punishment of crime, when the Constitution declares its object to be removal from and disqualification to hold office, and that, 'the party convicted shall nevertheless be liable and subject to indictment, trial, judgment and punishment, according to law, for his crimes.' Subject to those modifications, and adopting the recognized rule that the Constitution should be so construed as to be equal to the occasion for its exercise, and accomplish the purpose of its framers, impeachment remains here as it was recognized in England, at and prior to the adoption of the Constitution.

"These limitations were imposed in view of the abuses of the power of impeachment in English history."

In the light of these authorities defining the nature of impeachment and its purposes, it seems to me absurd that it should be limited to criminal offenses. As has been shown, the methods of procedure are entirely different, and it cannot be shown that the purpose of its punishment is the same as that in criminal actions. The overwhelming and indisputable weight of authority is that the object of impeachment is to secure the removal from office of persons who, by reason of misconduct or misbehavior, have forfeited their right to the confidence and trust of the people.

In criminal actions, the purposes of punishment are as defined by Bouvier: "To reform the offender, to deter him and others from committing like offenses, and to protect society." I dare say that none of the counsel for respondent will say that the purposes of this impeachment are the reformation of Mr. McGaughey, however commendable such a purpose would be, and however much, in the light of the charges that have been so solemnly presented against him, such a result would be a consummation devoutly to be wished; but this is not its purpose. It is to protect the interests of the people, the welfare of the public and the honor of the State against the

wilful, palpable and outrageous violations of his solemn oath of office and the sacred laws of this State.

In dealing with this question of impeachment, counsel for respondent have sought to profit by what they are pleased to term the imperfections of our State Constitution. At the time that our Constitution of 1876 was formed, our Constitution makers had the benefit of all the provisions contained not only in the Federal Constitution, but also those of most of the States of the American Union. Whatever benefit such a line of distinguished precedents might afford, they received, and it occurs to me that the charge of counsel that the framers of our Constitution were guilty of submitting to the people a document so imperfect in its construction that one of its most important provisions is found worthless and of no effect, is an imputation against their honesty or their intelligence.

Counsel for respondent lays particular stress upon the proposition that our Constitution is imperfect in that it does not contain an enumeration of impeachable offenses, and no law has ever been enacted to supply the defect.

Let us briefly consider the Constitution of our State relative to impeachment. It may be that from this source some fact may be drawn that will aid in the elucidation of this question. At the very inception of the government after the separation from Mexico, the framers of the charter of the Provisional Government seemed to contemplate the idea that persons entrusted with power by the people might prove false to the trust, and that citizens clothed with official power might so abuse that power as that the public good would require their removal.

Article XI of the Constitution, or Provisional Government of Texas, reads as follows:

"On charges and specifications being made against any officer of the Provisional Government for malfeasance or misconduct in office, and presented to the Government and council, a fair and impartial trial shall be granted, to be conducted before the general council, and if, in the opinion of two-thirds of the members, cause sufficient be shown he shall be dismissed by the Governor."

There, you see that while the shadows of war hung about this infant State our fathers recognized the right of the people to have protection against unfaithful and inefficient officers. You will observe that two general causes are here assigned, viz.: "misconduct" and "malfeasance," neither of which is an indictable offense, necessarily, or even ordinarily. But they go further, so as to remove everything that could cause a doubt as to the meaning, and provide for the removal of officers when, in the opinion of two-thirds of the members of the general council, "sufficient cause be shown." Mark the language, if you please. They do not say, "when an indictable offense has been committed," or "when a statutory crime has been committed," but they say that the offender shall be dismissed when, in the opinion of two-thirds of the general council, "sufficient cause be shown."

Counsel for respondent has denominated as an unheard of proposition the idea that their power to decide what is, or what is not, an impeachable offense could, with wisdom and safety, be left to the discretion of the Senate of the State; and members of this court, forgetful of the fact that they would be called upon to sit with supposed impartiality, have freely denounced it as monstrous. If this proposition is so deserving of condemnation, I beg gentlemen to direct their shafts of censure at the body of distinguished men who adopted the Constitution containing the provision I have quoted, rather than at myself. And who were these men? There were Archer, and Jones, and Menifee, and Davis, and Hodges, and Houston, and a score of others none the less distinguished.

In the Constitution of the Republic of Texas, adopted in 1836, all that relates to impeachment is contained in article 1, sections 6, 11 and 12, as follows:

Sec. 6. The House of Representatives shall choose their speaker and other officers, and shall have the sole power of impeachment.

Sec. 11. The Senate * * * shall have the sole power to try impeachments, and when sitting as a Court of Impeachment shall be under oath; but no conviction shall take place without the concurrence of two-thirds of the members present.

Sec. 12. Judgment in cases of impeachment shall only extend to removal from office, and disqualification to hold any office of honor, trust or profit under this government, but the party shall nevertheless be liable to indictment, trial, judgment and punishment according to law.

It will be observed that in this Constitution the words "malfeasance and misconduct in office," contained in the Constitution of the provisional government, are omitted. This omission was evidently purposely made. The question now logically presents itself: What was the intent of their omission? Was it intended to take from the Senate the power given by the previous Constitution to that body to decide what acts should be construed to come within the terms "malfeasance or misconduct in office;" or was it intended to remove even these slight limitations upon the action of the Senate and leave it free to decide, without a shadow of restraint, what should or should not constitute an impeachable offense? If there had been contained in the Constitution any pretense of an enumeration of impeachable offenses, the first proposition might, with reasonable force, be maintained; but as this Constitution omitted even the slight and indefinite limitation upon the power of the Senate contained in the words "malfeasance," and "misconduct," and did not substitute anything in their stead that could be so construed as to indicate what should or should not be impeachable, the conclusion appears to me to be irresistible that it was thought any limitation upon the power of the Legislature in this respect would be unwise and inexpedient.

The fact of the omission of the words "malfeasance and misconduct," coupled with the further fact that no offenses were named as impeachable, seems proof positive that the framers of the Constitution of the Republic of Texas did not look with favor upon the idea that the particular impeachable offense must be named in the Constitution before the people can invoke their power of impeachment to remove from office those who have betrayed the trust reposed in them.

If this was the intent of the framers of this Constitution, I commend it to the gentlemen who are counsel for respondent, as an authority worthy of their consideration and respect. The gentleman (Mr. Lightfoot) who opened this case for respondent cannot conjure enough power into a smile to crush it into nothingness. Against the overwhelming weight of such an authority he will find his shield of sarcasm a poor defense. The men who framed this Constitution were not pigmies, but giants. They had won their spurs both upon the field of battle and in the counsels of peace. They had rocked the cradle of Texas Independence, and unshackling Texas had made her one of the nations of the earth. There were Ellis, and Stewart, and Navarro, and Menifee, and Zavala, and Hardin, and Houston, and Clark, and Rusk, and a score of others. Surely the authority of this body of distinguished men cannot be met and overcome by a flippant smile.

In 1845, Texas became one of the States of the American Union. It became necessary to adopt a new Constitution. That part of this new Constitution relative to impeachment is found in article 9, and is as follows:

ART. IX—IMPEACHMENT.

Sec. 1. The power of impeachment shall be vested in the House of Representatives.

Sec. 2. Impeachment of the Governor, Lieutenant-Governor, Attorney-General, Secretary of State, Treasurer, Comptroller and of the Judges of the District Court shall be tried by the Senate.

Sec. 3. Impeachments of Judges of the Supreme Court shall be tried by the Senate. When sitting as a Court of Impeachment, the Senators shall be upon oath or affirmation; and no person shall be convicted without the concurrence of two-thirds of the Senators present.

Sec. 4. Judgment in cases of impeachment shall extend only to removal from office and disqualification from holding any office of honor, trust or profit, under the State; but the parties convicted shall, nevertheless, be subject to indictment, trial and punishment, according to law.

Sec. 5. All officers against whom articles of impeachment may be preferred, shall be suspended from the exercise of the duties of their office during the pendency of such impeachment. The appointing power may make a

provisional appointment to fill the vacancy occasioned by the suspension of an officer until the decision on the impeachment.

Sec. 6. The Legislature shall provide for the trial, punishment and removal from office of all other officers of the State by indictment or otherwise.

You will observe that the Constitution changed the officers subject to impeachment to meet the new condition of things, added new officers to the list and made sections relating to matter not contained in the old Constitution, but the Constitution is as silent as to the one preceding in regard to naming any offenses as impeachable.

The convention that framed what the gentlemen are pleased to term an imperfect Constitution was presided over by Thos. J. Rusk. As members of that convention, we find many names of the most distinguished citizens of the State at that time. Many of these men had already been engaged for long years in the service of the State, and many others afterwards reflected great credit upon the State by their brilliant public services.

When the State of Texas seceded from the Union in 1861, a new Constitution was adopted. In regard to the matter of impeachment, the Constitution of 1861 was an exact copy of that of 1845.

In 1866, the fifth convention met to adopt a Constitution for the guidance of the people. It was presided over by J. W. Throckmorton, who, crowned with years and honors, is still a beloved citizen of our State. There were Parsons, and Davis, and Waul, and Runnels, and Roberts, and Hurt, and Walker, and Hancock, and Ireland, and many others of our most distinguished citizens.

The Constitution of 1869 was an exact counterpart of those of 1845, 1861 and 1866 so far as it relates to the question of impeachment.

Again in 1875 there was assembled perhaps the most distinguished body of men ever congregated upon Texas soil. The convention was presided over by E. B. Pickett. John Henry Brown, Ed Burleson, W. L. Crawford, J. W. Ferris, John L. Henry, Asa Holt, C. B. Kilgore, A. T. McKinney, W. P. McLean, Marion Martin, Thos. L. Nugent, John H. Reagan, L. S. Ross, Wm. H. Stewart and many other men of like character struggled during the weary months of that convention for the perfection in all its parts of our organic law. To contend, as the distinguished counsel on yesterday intimated, that these men, in forgetfulness of their solemn duty to the people, negligently failed to properly consider so important a part of the fundamental law of the land, is a gratuitous insult to their intelligence and patriotism. On the contrary, the proof is abundant that they gave to this part of the Constitution their most solemn consideration. The record of that convention shows that a special committee was created for the express purpose of considering matters pertaining to impeachment, and that this committee, after long and careful deliberation, reported. As a result of the labors of this convention, certain changes were made in the Constitution of our State pertaining to this question.

The Lieutenant-Governor, the Commissioner of the General Land Office and the Judges of the Supreme Court and Court of Appeals (who were not subject to impeachment under the Constitution of 1869) were brought within the jurisdiction of the High Court of Impeachment. A new article was inserted in regard to the removal of the district judges as well as one providing for removal by address of the judges of the Supreme Court, Court of Appeals and District Courts. Section 6 of the Constitution of 1869 was changed into section 7 and amended so as to read as follows:

"The Legislature shall provide by law for the trial and removal from office of all officers of this State, the modes for which have not been provided in this Constitution."

I would especially call your attention to the language of the latter part of this section. If language means anything, the words "the modes for which have not been provided in this Constitution," imply that the mode for the removal of some officers has been provided for in this Constitution. What officers? Of necessity the ones named in section 2. What mode? Of necessity the one named in section 1.

Thus you see that the Consultation of 1835, the Conventions of 1836, 1845, 1861, 1866, 1869 and 1875, have all passed upon this question of impeachment. More than that. During all the sessions of the Congress of the Re-

public of Texas, between 1836 and 1845, and from 1845 down to this good day, during which time twenty-three Legislatures of the State have convened in this city, no one, so far as I have been able to ascertain, has ever yet testified to his belief that our Constitution was imperfect in regard to impeachment, by invoking legislative action to carry its provisions into effect. But there is another fact that goes far towards sustaining our position in this matter, and it is this, that in all the impeachment proceedings in this State, although the senior counsel for respondent (Hon. W. M. Walton) occupied a position like that which he now holds, the defense that our Constitution is so imperfect that that it will not support an impeachment proceeding was never interposed. If our Constitution is now fraught with imperfection, so was that of 1869. It does seem strange that the learned counsel, under this condition, would pass through the fiery ordeal of three impeachment trials without taking advantage of this alleged defect in aid of his client. Is it not more reasonable to suppose that, driven to desperation by the indefensible acts of his client, he seeks now to inject this defense into the case, to cloud your understanding and warp your judgment?

The Constitution of this State, in so far as it relates to the question of impeachment, is in substance the same as that of the United States, with but one exception: The Constitution of the United States, after an enumeration of the various officers that are subject to impeachment, provides that they shall be removed from office on "impeachment for, and conviction of treason, bribery and other high crimes and misdemeanors." The Constitution of the State does not mention any offenses as being impeachable, but simply provides that the power of impeachment shall be vested in the House of Representatives. It is on this ground that counsel for respondent argues that the Constitution is imperfect. If their position is correct, it is a grievous accusation laid at the door of those to whom was given the right to frame our Constitution. To sustain such a position, you must not only impeach the intelligence of those honored men, and put upon them the brand of inexcusable negligence, but you must go further than that; you must put the seal of condemnation upon the framers of the Constitutions of other States of the American Union, for if our Constitution is imperfect, in that it omits an enumeration of impeachable offenses, many other State Constitutions are tainted with the same imperfections. The Constitution of Georgia simply provides that the Senate shall have full power to try impeachments, without attempting to enumerate any offenses as being impeachable ones.

The Constitution of Louisiana simply provides that the House of Representatives shall have power of impeachment, and that the Senate shall try the same. There is no enumeration of offenses laid down in it that are impeachable.

The Constitution of New Hampshire says only this: "The House of Representatives shall be the grand inquest of the State, and all impeachments made them shall be heard and tried by the Senate."

The Constitution of New York says: "The assembly shall have the power of impeachment by vote of the majority of all the members elected. The court for the trial of impeachment shall be composed of the President of the Senate, the Senators," etc.

The Constitution of Rhode Island, after providing that the House of Representatives shall have the sole power of impeachment, says that the "Governor and all executive and judicial officers shall be liable to impeachment."

The Constitution of South Carolina says: "The Governor and all other executive and judicial officers shall be liable to impeachment."

In none of the Constitutions here referred to is there the slightest pretense or the naming or defining of any offense as an impeachable one; so that to contend that the Constitution of Texas is defective, it must also be contended that the Constitutions of many other States of the Union, to the making of whose Constitutions their most renowned and illustrious citizens devoted their best talents, are likewise defective. Such a contention it is absurd to claim and impossible to maintain. The more reasonable view would be that there was an omission purposely made, and that no enumeration of impeachable offenses was thought necessary. To sustain this position in regard to our own State, it is only necessary to remember that shortly prior to the adoption of the Constitution of 1876, the State had wit-

nessed the trial of one or more impeachment cases, and the memory of these cases was fresh in the minds of the framers of our Constitution.

Many of the men forming that Constitutional Convention had been members of the Senates that had sat as courts in the trials of these cases, or as members of the House of Representatives directing the prosecution. It would be unreasonable to suppose that men thus situated would adopt a provision so important without careful and thoughtful consideration. The fact that they adopted almost the identical language of the Constitution of the United States, except in the omission of the causes of impeachment, is convincing proof to me that they intended the omission. They recognized the futility of an attempt to name all offenses that should subject an unfaithful official to trial by this high court. So extended is the scope of the discretion by our officers, and so multiplied the ways by which that discretion might be exercised to the damage of the public, that to attempt to name them all would be like gathering up grain by grain the sands upon the seashore, or leaf by leaf the foliage of the forest. So fertile is the human heart in the resources for evil doing, and so varied the phases that misconduct may assume, that all efforts to limit by constitution or statute offenses deserving of removal, would be futile, as well as impolitic and unwise.

But the counsel for respondent has sought also to adduce proof from our own Constitution in support of the proposition that an offense to be impeachable must also be a crime, indictable under the statute law of this State. In support of this proposition, he reads, with evident satisfaction, section 8, of article 15 of the Constitution, relating to the question of address. This section provides, "that the judges of the Supreme Court, Court of Appeals and District Court shall be removed by the Governor on the address of two-thirds of each House of the Legislature, for wilful neglect of duty, incompetency, habitual drunkenness, oppression in office, or other reasonable cause which shall not be sufficient grounds for impeachment." He argued that the use of the term "other reasonable cause that shall not be sufficient grounds for impeachment," implies that the offenses of wilful neglect of duty, incompetency, habitual drunkenness and oppression in office are not impeachable offenses. I dispute the correctness of this construction, and contend that if it proves anything, it proves the reverse of the contention of the counsel for respondent; that instead of it meaning that these offenses are not impeachable, that the reasonable implication would be that these are impeachable offenses.

Let us judge of the correctness of the construction that counsel seeks to put upon this section, by applying the same construction to other sections of the Constitution. For example, take section 24, article 5, which reads in this way: "County judges, county attorneys, clerks of the District and County Courts, justices of the peace, constables and other county officers, may be removed by the judges of the District Court for incompetency, official misconduct, habitual drunkenness or other causes defined by law, upon the cause therefor being set forth in writing, and the finding of its truth by jury." If in section 8 the use of the terms, "other reasonable causes which shall not be sufficient grounds for impeachment," can be construed to mean that the offenses enumerated before in that clause are not impeachable offenses, the same rule applied in section 24 would lead to a result that at first glance is known to every member of this court to be incorrect and absurd. The same construction would force the conclusion that incompetency was an offense defined by law, and that official misconduct would come within the same category. I call upon the honorable counsel for respondent to designate here and now, the chapter, the article, and the section of any statute of the State of Texas, in which incompetency has ever been sought to be defined, and for any definition of misconduct in office that has ever been suggested. So much then for what counsel has seen fit to term a conflict between section 8 of article 18 and section 2 of the same article. We see that instead of there being a conflict, as contended, the one is applied, even if his construction is correct, only to the judicial officers of the State and not to the officers of the executive department. Again, if his construction is correct, that section 8 was intended as a limitation upon section 2, I want to demonstrate the absurdity and injustice of such a provision. We have here two officers, one belonging to the executive department of the government, the other to the judicial. They are co-ordinate in their

rank, they derive their power from the same source; they are equal in authority in every respect. If the one having an office connected with the judicial department of the government is guilty of wilful neglect of duty, incompetency, habitual drunkenness, or oppression in office, it is within the domain of the Legislature to secure his removal. If, on the other hand, a member of the executive department of the government be guilty of the same offenses, if he wilfully has not performed his duty, by reason of habitual drunkenness, if he is incompetent, or if he is guilty of misconduct, wrongful and grievous oppression in office, if the contention of counsel be correct, there is no power that can secure his removal.

The section of the Constitution pertaining to the question of address was placed in the Constitution for the first time in 1876. Shortly prior to that time officers connected with the judicial department of the government had been on trial before the Senate for the offenses named in this section. The people of the State were aroused; they beheld their dearest interests at the mercy of men clothed in judicial ermine who were grossly incompetent, who wilfully neglected their duty, who were habitual drunkards, and the rights and property and the lives of the citizens of Texas were subject to the grievous oppression of these men who were supposed to be the ministers of justice. In order to more effectually restrain these public servants and to correct the abuses with which the judicial system of the State had become impregnated, this section in regard to address was placed in the Constitution.

It was evidently intended that it should be limited to the offenses named in the section, and it was not intended as an enumeration of any offenses which were not impeachable in their nature. But let us suppose for the sake of argument that section 8 was intended to indicate that the offenses therein enumerated were not impeachable, either in a judicial officer or executive. I deny the proposition that it would have any influence in this case. The articles that we have submitted against the Commissioner of the General Land Office do not charge him with habitual drunkenness, with incompetency with neglect of duty or with oppression in office, or with any offense of like grade. These charges are more serious in their nature. He is charged with a wilful and palpable violation of his oath of office; he is charged with a most grievous violation of the laws of the State; he is charged with collusion with certain individuals of the State, whereby the most sacred interests of our people have been jeopardized. He is charged with attempting to procure from those in his service certificates to alleged facts that do not exist, and he is charged with deliberately, and with his own hands, placing upon the public records of this State an entry that is a forgery. This is the nature of the charges against the Commissioner—not trivial in their nature, not frivolous in their character, not the result of incompetency, and not the result of neglect but wilfully, knowingly and unlawfully violating the solemn obligations of his position. As a further support to the position assumed by that side, to prove that an offense must be indictable in order to be impeachable, counsel has cited with evident glee, section 10 of the Bill of Rights. The part of this section referred to is this: "And no person shall be held to answer for a criminal offense unless on indictment of a grand jury, except in cases in which the punishment is by fine or imprisonment otherwise than in the penitentiary, in cases of impeachment and in cases arising in the army or navy, or in the militia when in actual service in time of war or public danger." Counsel argues from this that impeachment must be a criminal offense. If the use of the word "impeachment" in this connection implies that an act to be impeachable, must be indictable, the use of another word in the same connection, denoting a different character of offense, must likewise prove that this last named offense is also indictable. Take cases arising in the militia of the State when in actual service, an offense against the military code. This offense is named in this same section of the Bill of Rights. If counsel's contention be true in one respect, the like conclusion must be true in regard to offenses occurring in the militia; that is, that they must also be indictable in their character. In the military service of the State, he who violates an order of his superior is guilty of an offense under the rules of the militia, punishable by a court, not of law, but military in its nature.

What would you think, gentlemen, if you were sitting as members of

a military court trying an offender, thus charged with an infringement of military rules, if the learned counsel for respondent should gravely announce to you the proposition that the person accused cannot be convicted in that court unless he was also guilty of an offense indictable by law. If the technical construction sought to be invoked by counsel is correct, it proves too much. Take, for example, that clause of the Constitution of the United States which says that the President shall have power to pardon, except in cases of treason and impeachments. Would not the same rule of construction necessarily force you to the conclusion that treason is not an impeachable offense, because it is enumerated as one of the exceptions of the power of the President to pardon, while impeachment is another? Let us go further. The Constitution of Virginia provides that a person may be removed from office by impeachment for any misconduct in office or any other high crime or misdemeanor. If his construction be correct, the conclusion is irresistible that misconduct in office is, in itself, a high crime and misdemeanor, the very position which counsel has combatted with such energy and with such ability.

Again it is suggested that proof is afforded that an impeachable crime must also be an indictable crime, because that in the Constitution of the United States and in the Constitution of all the States of the Union there is a provision made that the party impeached shall also be subject to indictment and trial according to law. From the connection thus made between cases of impeachment and cases to be tried in the courts of law, the counsel has sought to draw the conclusion that all offenses impeachable would likewise be indictable. A brief recourse to the history of impeachment will explain this association of terms satisfactorily and easily. In the German tribes where we find the first record of impeachment proceedings, and in England, throughout her long and varied experience in such trials, there was this element connected with impeachment proceedings that is not to be found in our government, that is that the impeachment proceedings were designed and utilized not only for the purpose of removing the offending officer but also for the purpose of punishing the offense, if any had been committed, against the law. Thus, if an officer was charged with bribery, the same proceeding not only sought to deprive him of his office but also proposed to visit punishment upon him for the offense committed.

When our Constitution was framed, our Constitution makers remembered this fact and deemed it unwise and impolitic to constitute a tribunal so extended in its power, so they limited the jurisdiction of the Court of Impeachment to the question of removal from office and disqualification to hold office. To secure this limitation it must be done by positive statute, for without it the High Court of Impeachment as constituted in England would have descended to us. What more effective way could have been designed than to provide that the jurisdiction of the High Court of Impeachment should extend only to removal from office, while if an offense had been committed against the positive law of the land, that the offender should be subject to the course of ordinary jurisdiction.

I believe enough authority has been produced by the gentlemen who have preceded me, as well as myself, to convince you that Mr. Cooley was right when he said that the offenses for which an officer may be impeached "are any such as in the opinion of the House are deserving of punishment under that process," and that the Senate is authorized to remove any person from office for any offense that in their estimation deserves such punishment. But, if this contention is incorrect, there is still another source to which we can confidently go for an enumeration and definition of impeachable offenses.

I am aware of the fact that in announcing this doctrine, I am subjecting myself to the shafts of the counsel for respondent, for on yesterday he intimated that it was beyond belief, that any one would assert so wild and visionary a doctrine, but, while I grieve at thus incurring his ridicule, I comfort myself with the thought that I am but following the teachings of Mr. Story and many other great American writers upon the subject.

In speaking of the source to which we must go to ascertain what are impeachable offenses, Mr. Story, on page 581 of his work on the Constitution, says:

"The only safe guide in such cases must be the common law, which is

the guardian at once of private rights and public liberties, and however much it may fall in with the political theories of certain statesmen and jurists to deny the existence of a common law belonging to and applicable to the nation in ordinary cases, no one has as yet been bold enough to assert that the power of impeachment is limited to offenses positively defined in the statute book of the Union as impeachable high crimes and misdemeanors.

"The doctrine, indeed, would be truly alarming that the common law did not regulate, interpret and control the power and duties of the court of impeachment. What, otherwise, would become of the rules of evidence, the legal notions of crime, and the application of public or municipal jurisprudence to the charges against the accused? It would be a most extraordinary anomaly that while every citizen of every State originally composing the Union would be entitled to the common law as his birthright, and at once his protection and guide, as a citizen of the Union or an officer of the Union he would be subject to no law, to no principles, to no rules of evidence.

* * * * *

"Those who believe that the common law, so far as it is applicable, constitutes a part of the law of the United States in their sovereign character as a nation—not as a source of jurisdiction; but as a guide and check and expositor in the administration of the rights, duties and jurisdiction conferred by the Constitution and laws—will find no difficulty in affirming the same doctrine to be applicable to the Senate as a court of impeachment."

The articles of our Penal Code providing that no act shall be construed into a crime unless made so by the positive law, has no application to a question like that of impeachment; it aims at and refers only to those offenses that are enumerated in the Penal Code.

It is not contended that we are prohibited from going to the common law for authority upon any question upon which there is not positive statute. At the time of the adoption of the United States Constitution, when bribery was designated as an impeachable offense, there was no statute declaring it a crime. If a person, an officer of the government, had been arraigned before the Senate of the United States upon the charge of bribery, resort must of necessity have been had to the common law for the definition of the offense of bribery.

I take it for granted that no one will deny the proposition, there being questions upon which our Constitution and law are silent, that resort can be had with propriety to that great source of much that is best in our law, the common law, upon cases affecting the rights of property of our citizens. When our statutes are silent we can go to this great source for authority upon questions of parliamentary usage and parliamentary law and parliamentary proceedings, that form so great a part of the common law.

What is this common law by which we are thus bound and guided in the definition of offenses that are impeachable? It is that great Bill of Rights which is the foundation of all prosperity. It is to be found in the common law courts as well as in Courts of Impeachment. This court sitting here to-day is making law, not by statute but by example and by precedent. From every judicial bench in the State of Texas, there is being added a constant accretion to the growth and development of the common law. This being the nature of the source to which we must go, we can find in parliamentary proceedings of this and the mother country, the rules and precedents to guide us in the determination of what are impeachable offenses. In the parliamentary courts of England it has never been seriously contended that an offense, in order to be impeachable must likewise be indictable. Many offenses have been tried by impeachment there, that were not offenses against any existing law. They utilized this remedy for the purpose of removing those guilty of misconduct. In the impeachment courts of our own country, the proposition of respondent has never met with countenance or favor; it has on the other hand, whenever the question has been determined at all, been determined adversely to the contention of respondent. In the Chase trial, the same demurrers were made as are made here; they were overruled. In the Pickering case, they were made without avail. In the case of Andrew Johnson the same question was considered. In the case of St. Julien Cox in the State of Minnesota, his counsel pressed with great zeal and favor this same proposition, but the court in overwhelming

numbers, pronounced it unsound, and in our own State in a case in which Colonel Walton was counsel, this same plea that an impeachable offense must also be indictable ones was submitted and overruled by the Senate.

Now, gentlemen, I feel assured that if the declaration of the wisest and most learned in the Constitution and laws of our land is regarded as an authority by you, the following propositions must be established beyond question in your mind:

1. That the omission in our Constitution of any term of enumeration and definition of what are impeachable offenses was an intentional one.

2. That, by reason of the infinite phases that official misconduct may assume, the insertion of such an enumeration and definition in our Constitution would have been unwise.

3. That our Constitution is not faulty and imperfect by reason of such omission.

4. That the determination of what are impeachable offenses may be left to the wise discretion of the House of Representatives and Senate, or resort may with propriety be had to the common law for the decision of the question.

5. That impeachment is not a criminal proceeding, but a grand inquest civil in its nature, instituted not for the punishment of the offender, but for the protection of the public against the unfaithfulness of officials.

6. And that an offense to be impeachable need not be a violation of a statutory law.

Now but a word more. The people of this State are sovereign. Government in all its departments and attributes is the property of the people. They gave it life and they preserve it. By the people and in their name men are clothed with official power and commissioned to execute the functions of the government in their interest. In our land men do not inherit office. The only royalty that is supposed to give one man precedent over another in popular favor is the royalty of honesty, capacity and fitness to serve the people. The people are supreme both to give and take away. If the Constitution had provided as a mode of removal, and if it were possible that the electors of the State could assemble here in one grand mass meeting, no one could or would question the right and propriety of the people then assembled to take from W. L. McGaughey, for any cause deemed sufficient to them, that which they gave to him. This cannot be done; but it is provided that the people may assemble here through chosen representatives to do that which must be done to protect the interests of the public and the purity of our government. There are no limitations placed upon the people in the selection of their servants.

They may elevate to high official positions citizens of this State for whatever in their wisdom they may deem a sufficient cause. They may refuse to clothe with power citizens, however worthy, without explanation and without responsibility to any authority. The discretion to determine what person shall be placed in positions of trust must be placed somewhere, and there is no safer repository for such discretion than in the people themselves. The discretion to remove officials must be placed somewhere, and where can it be more safely placed than in the representatives of the people? You say that such discretion would be liable to abuse. Lodge power and discretion wherever you please, they can be abused. The power given to the people to select fit and capable men for office is often used to put unfit and unfaithful men in office; yet to take from the people this power is to deny them the right and capacity for self-government. You can conceive a case where a hardship might result from the abuse of the power vested in the House of Representatives and Senate of this State to remove an officer for whatever cause may seem sufficient, but such an occurrence is extremely improbable. To take from these honorable bodies this power on account of the possibility of such a contingency would be no more justifiable than to take from the Legislature the power of placing laws upon the statute book, because that sometimes bad laws are enacted. No, gentlemen, the fathers of Texas gave you this power, believing it could be lodged in no safer hands. See to it that you exhibit the same wisdom in its exercise that they did in its bestowal.

They gave you the power to exercise as statesmen and not as lawyers; as a legislative body and not as a court. You are not a court; you do not

perform the functions of a court. You are not clothed with the power of a court. It was not designed that you should be a court. There is no principle of our government more clearly established than that there is and should be a complete divorcement of the judicial and legislative departments. No man can exercise at one and the same time duties as a legislator and as a judge. Counsel for respondent has sought, with all the vehemence of his nature, to deeply impress upon you that you are a court, but I would urge you to do your duty as patriots and statesmen not bound to the narrow, technical rules of the law, but guided by the higher and truer spirit of loyalty to the best interests of the public, and to purity and probity in the administration of the government.

The distinguished counsel on yesterday sought to belittle this proceeding, so solemnly inaugurated and maintained, by charging, perhaps in the language of another, that this impeachment was bringing the largest piece of artillery in the arsenal of the State to bear upon a snowbird. Did it not occur to you, gentlemen, that this was a singular, inappropriate comparison, when applied to this case? A snow bird! A something so tiny and weak that the chubby fingers of an infant in its mother's arms can crush it into nothingness; so pure that its tread leaves earth's carpet of snow as spotless as when it fell from the clouds of heaven! And what are the acts that he so lightly considers: With hand uplifted to heaven, and calling upon the God of the Universe to witness his consecration to the service of the State, this man swore to faithfully perform the duties of his office. By all the charges presented against him it is solemnly asserted that he has proven false to that oath. Many a man charged with an offense no more grievous than this, to-day languishes in a felon's cell.

He is charged with acts that manifest a spirit worthy only of an assassin. The man who creeps stealthily to the bedside of his victim and, guided by the uncertain light struggling through the window, crushes out life by a single blow, is no more deserving of the horror and condemnation of his fellowman than is the man who, with all the wily ways of a demagogue, insinuates himself into the confidence of the people, and then betrays and murders that confidence. But that is not all. The public free school lands of the State have been the boast and pride of our people. They have descended to us as a part of the blood-bought heritage consecrated to the use and benefit of the children of the State. It is charged that this man, in defiance of law and in disregard of precedent, has frittered away many thousand acres of this goodly heritage, forever robbing the children of Texas of its unbounded benefits. He has betrayed the confidence of the old to plunder, like a robber, the young. It is charged that the long established customs of his office to him have been but feathers to be blown whither the winds of vanity and self-importance might direct. It is charged that with him the solemnly enacted statutes of our State have been but as ropes of sand—broken at will. It is charged that the Constitution of our State, which should receive the veneration and respect of all good citizens, has to this man been a foul and unholy thing, worthy of no regard and commanding no respect.

Yet in the face of all these charges, counsel says we are but directing our batteries at a snowbird. If all these offenses that are charged against the Commissioner deserve only the appellation of a snowbird, I wonder how deeply dyed his hands must be in guilt, how outrageous must be his acts, and how damnable must be his deeds before counsel would dignify him with the appellation of an eagle? But I would not pollute this kingly bird with so ignoble a comparison. Rather would I designate the acts of the Commissioner as the acts of a vulture feeding with an insatiate hunger upon the bleeding heart of his State, tearing with cruel beak muscle from muscle; or as a foul bird hovering with outstretched wing above the people, spreading with his baleful presence and example dissatisfaction among the people, destroying confidence in their government, which, once destroyed, is followed by anarchy and ruin. Had counsel thus designated his client, he would have been as correct in his simile as he has been incorrect in his legal position.

At the conclusion of the above, Senator Swayne offered the following:
WHEREAS, The Hon. Jno. D. Templeton, who served with distinction as

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Attorney General of this State for several years, died at Fort Worth on yesterday; and, whereas, his aged father is now a member of the House of Representatives; and, whereas, the remains will be buried in this city to-morrow morning; therefore, be it

Resolved, That this court, in respect of Texas' distinguished son, when it does adjourn for to-day, does so until 11 o'clock to-morrow morning, so that members of this court, the Board of Managers and attorneys for respondent may attend the funeral.

The chair stated that the resolution would lie on the table subject to the action of the Senate.

On motion of Senator Simpson, the court adjourned to 11 a. m. to-morrow.

SENATE CHAMBER, AUSTIN, TEXAS, April 26, 1893.

The High Court of Impeachment convened pursuant to adjournment.

Quorum present.

President Pro Tem. Kearby presiding.

Journal Clerk W. B. O'Quinn, having, by resolution adopted on yesterday, been made an officer of the court, was administered the following oath by President Pro Tem. Kearby, to-wit:

"Do you solemnly swear that you will faithfully discharge the duties of Journal Clerk of the Court of Impeachment in the trial of W. L. McGaughey, Commissioner of the General Land Office of Texas, so help you God."

Hon. J. J. Faulk then proceeded to address the court in behalf of the respondent.

Hon. E. W. Fagan followed on behalf of the State.

Pending his conclusion, on motion of Senator Imboden, the court adjourned to 2:30 p. m.

AFTERNOON SESSION.

Court met pursuant to adjournment.

Quorum present.

President Pro Tem. Kearby presiding.

Senator Swayne sent up and had read the following:

"I should like to hear from the prosecution on the latter part of section 4, article 15 of the Constitution, in connection with all of section 2, the first clause of section 6, and the first part of section 8 of the same article."

Senator Yoakum sent up the following:

"We want to know whether the acts and omissions of the respondent prior to his re-election can be made the basis of impeachment at this time."

Hon. E. W. Fagan concluded his argument, the whole being as follows:

Mr. President and Gentlemen of the Court:

In speaking to the demurrers, I will be very brief. In my judgment there are only three questions involved:

First. Is our State Constitution on impeachment self-executing?

Second. Must an impeachable offense necessarily be an indictable offense?

Third. Are acts committed anterior to the last election and qualification of defendant impeachable?

In support of the first proposition, I wish to call your attention to the Constitution of the United States on the subject of impeachment. There is no material difference, except that the Constitution of the United States declares that certain officers (naming them) may be impeached for high crimes and misdemeanors, while our Constitution leaves out the phrase, "high crimes and misdemeanors." Now, under the United States Constitution, there has never been any act of Congress defining what are high crimes and misdemeanors; and although several important impeachment trials have been had under it, the necessity for a congressional enactment on the question of impeachment has never yet been made apparent to our law-makers. The question of what are high crimes and misdemeanors constituting impeachable offenses has always been left, as it should be left, to the sound discretion of the United States Senate, sitting as a High Court of

Impeachment. The greatest politicians of the age, as well as our ablest lawyers and law-writers, have recognized and conceded the fact that it would be utterly impossible by legislative enactment to define and specify the thousand and one wrongs that are left within the power of a public officer to commit, which would render him unworthy of the confidence of a free people, and unfit to hold a position of honor among them.

Strike out the words "high crimes and misdemeanors" from the United States Constitution and you have our State Constitution on this point. Under our State Constitution the question of what are impeachable offenses is left to the sound discretion of the Senate, sitting as a High Court of Impeachment. Under the United States Constitution the question of what are high crimes and misdemeanors is left to the sound discretion of the Senate, sitting as a court. Now, practically, what is the difference in the meaning and operation of the two Constitutions? There is none; and I am surprised that the gentleman, who, like myself, hails from the "outlaw district of North Texas," and who so feelingly compares his client to the immaculate Nazarene, should undertake to draw the distinction before this honorable Court, and try so hard to dodge the evidence in this case by having you side-track it upon demurrer. If the defendant is so innocent of any wrong, so lamb-like, and so Christ-like, surely he has nothing to fear from the evidence.

I also call your attention to the fact that eight of the other States of this Union have the same Constitution on the subject of impeachment that we have, and in none of them is there a solitary legislative enactment to put the constitutional provision into operation; and yet in all these States they have had impeachment trials, as they have had in our own State and the United States, without legislative enactment.

Now, gentlemen of the Court, calling reason to your aid—and, as judges, you are compelled to do this in order that you may decide this matter intelligently—what necessity can you see for a legislative enactment to put article 15 of our State Constitution into operation?

The first section of article 15 says the power of impeachment shall be vested in the House of Representatives. Section 2 states what officers may be impeached, including the Governor, Lieutenant-Governor, Attorney-General, Commissioner of the General Land Office, etc. Section 3 prescribes the oath, even to the form of the oath, and states how many votes it shall take to convict. Section 4 prescribes what judgment you shall render. Section 5 provides that the accused shall be suspended from office during trial. Every possible necessity of the trial is provided for in the Constitution, and yet these gentlemen say that this article of our Constitution is not self-executing, and is absolutely null and void in the absence of legislative enactment to give it life. The position assumed by them is contrary to all the precedents upon this subject, contrary to law, reason and common sense.

Believing that I address a court of intelligence and discernment, I will not trespass upon your further patience upon this proposition, but will leave it, confident that this demurrer will be overruled.

The second proposition is, must an impeachable offense necessarily be an indictable offense?

On yesterday my friend, Captain Lightfoot, made an able and a plausible argument in support of these demurrers. In his zeal for his client he left the domain of reason and wandered away into the dreamy realm of sentiment, carrying this Court back to a period when all the world was dark; to a time when Jerusalem slept amid her hills as quietly as a child upon the breast of its mother; when the noiseless sentinel stood like a statue at his post, and the philosopher's lamp burned dimly in the recesses of his chamber; when moral darkness involved the nations in its unenlightened shadows, and reason shed a faint glimmering o'er the minds of men, like the insufficient shining of a distant star; when the poor heathen mother threw her little innocent babe into the Ganges as food for the crocodiles, in order to appease the wrath of her gods, and all the world bowed down to stocks and stones and worshiped idols, save a little handful of God's chosen people, who had kept the faith. He painted to you the picture of the trial and condemnation of a god, whose blood was demanded by a mob, urged to fury by ignorance and religious fanaticism, and with a tongue such as Satan assumed when he spoke to Eve in Paradise, compares that atrocious butch-

ery with the case at bar. Take the comparison and let the gentleman profit by it if he can.

There is no infuriated mob howling for this man's blood. For myself, I have been his personal and political friend, but if these charges are true I would not hesitate one second to hurl him from this high and honorable position into the depths of political oblivion. The gentleman who opened this case has ably presented to this court, in support of the proposition that an impeachable offense must be an indictable offense, but one theory of the law. There are two theories upon this proposition, and my learned friend has made the mistake of presenting one without saying one word about the other. He has read to you a great many authorities in support of his theories, which have had the effect more to mistify than to enlighten you upon this question.

Suppose you allow me to present to you both sides of the case in the light of one of the greatest law writers of the age:

"What are the lawful grounds of an impeachment?"

Pomeroy says that two answers have been given to this question, resting upon two supposed theories of construction. One theory confines the operation of impeachment clauses within very narrow limits, and contends that an impeachment can only be brought against an officer for some indictable offense. This theory is maintained by the defendant's counsel, but discarded by the law writers.

The second theory, which we maintain, does not confine the House of Representatives as the accusers, nor the Senate as the triers, within such narrow grounds. We contend that as the punishment to be inflicted has sole reference to the official position of the offender, so the acts for which that punishment is to be inflicted must have direct reference to the offender's official duties and functions.

We contend, in the light of authority and precedent, that when the Commissioner of the Land Office, or any other officer of this State government, has knowingly and intentionally violated the express terms of any law of this State charging him with an official duty, or when he has exercised any discretion given him by law in a willful and corrupt manner, unmindful of the ruinous consequences of his acts, he is impeachable, and by every reasonable construction ought to be.

I might stand here all day and give you both reason and authority why this should be so. Every State officer is necessarily clothed with discretionary powers; the State could not exist without it; but when the discretionary powers are willfully and corruptly abused,—and they can be abused in a thousand different ways without rendering the officer indictable at law,—would you contend a moment that in this free government of ours, where all power is inherent in the people, that we are without remedy against a corrupt official?

The very idea is absurd and preposterous. It is not necessary for me to weary you with any more authorities upon this proposition, as my cocounsel have already presented to you many of the authorities upon which we rely to sustain our view.

I will now notice briefly the third and last proposition upon which the defendant relies, and allow me again to express my astonishment that this Christ-like and exceeding innocent gentleman should allow his attorneys to invoke the statute of limitations in his behalf.

Can an officer be impeached for any act committed while in office, after his term of office has expired?

We say that he can. Rawle on the Constitution, in enumerating officers subject to impeachment, speaks of those who are or have been in public office. Let us again call reason, which is the foundation and essence of all law, to our aid. We see, by referring to the Constitution, that two punishments may be inflicted, one is removal from office, the other is to prohibit the defendant from ever holding office in the future. Now, if a man's office has expired either by lapse of time or resignation, a judgment removing him from office would be folly, and how easy would it be for an officer to resign, pending investigation, and thereby defeat an impeachment. The paramount object of impeachment is not so much to punish the offender as it is to protect the people from corrupt officials. Let me illustrate:

The power to pardon is a discretionary power given by the Constitution

to the Governor of this State. Now suppose the Governor, immediately upon the adjournment of the Legislature, were to abuse this power by pardoning every convict in your State prison; admitting it to be an impeachable offense, who would impeach him before his term of office expires? The Legislature will not meet again before his term of office expires. In this case do not reason, justice and common sense demand that, in the absence of an express inhibition, the Legislature at its next session present articles of impeachment, and that the case be tried and a judgment be rendered forever prohibiting him from holding office again within this State?

When you put the test of reason to the positions taken by respondent's counsel, they become as mists before the sun, and in my judgment were only intended to be used as a loophole of escape from the facts of this case. You may sustain these demurrers if you see fit. You may refuse to try this case on its merits, but as surely as night follows the day, this case will be tried. The court will sit and read and discuss the evidence in every village and in every hamlet, upon every hilltop and in every valley in this broad State, and a verdict whether or not the defendant is innocent or guilty will be rendered by the people.

Hon. T. S. Henderson then concluded the argument for the State, as follows:

May it please you, Mr. President and your honors of the High Court of Impeachment: You will observe that this presentment is in the name of all of the people of the State of Texas; not in the name of the State, for the State is but an instrument of the people and has its limitations; but I repeat in the name of that final and unlimited power, all of the people; and it is addressed to you as a court of the sovereigns. Be it said to the credit of the integrity and faithfulness of the public service in our State, the mighty powers of this court have been seldom invoked, and this court has held no session for more than nineteen years. And now at the outset the respondent meets you with a denial of your right and of the right of the people of this State to try him for any matter affecting the administration of his office, and particularly for the matters alleged against him in the articles exhibited against him.

The respondent presents his demurrers, general and special, which substantially contain the following issues of law:

1. That this court has no jurisdiction under the Constitution and laws of Texas to try articles of impeachment against him, because neither the laws nor the Constitution of the State define any crime or offenses for which impeachment will lie. That the constitutional provisions on the subject of impeachment are not self-executing, but require legislation to put them in operation.

2. That the articles exhibited against him contain no impeachable matter, because there is no matter or thing therein alleged against him evidencing corruption on his part in the administration of his office, and no act manifesting mala in se nor mala prohibita, and because there is no treason, no bribery, no high crime or misdemeanor charged against him.

3. That some of the acts charged against him occurred prior to the commencement of his present term of office and that he cannot be impeached therefor.

In this discussion I shall confine myself as far as practicable to the consideration of the first and third propositions, presented in the demurrer as stated above, merely discussing the second in its incidental relations to the first and third. At the outset, I deem it proper to make a brief historical epitome of the trial by impeachment, to the end that we may make ourselves fully understood by this honorable court.

The trial comes down to us from the English Constitution, and while it seems to have been the inherent right of the whole people acting through their Commons to present by impeachment to the Lords for trial from the most ancient times of the kingdom, yet practically it was an unused remedy until about 1376, when in the reign of Edward III, it was first actively invoked against one Richard Lyons, farmer of the subsidies and customs, upon the charges: (1) Of removing the staple of wool and other merchandise from Calais. (Richard was probably using his office to get a corner on these staples). (2) Lending money to the king at usury. (3) Shaving the king's papers with his creditors. That the remedy was a substantial

one is shown by the judgment pronounced against him by the Lords. He was committed to prison during the king's pleasure and adjudged to pay a fine and to be disfranchised in the city of London, never to hold office under the king nor approach his council or court. (*Hatsell's Practice*, vol. 4, p. 56.)

It is true that antiquarians have traced the remedy far back into the Saxon forests, when that stern people would, on occasion, organize themselves as a body into a court to deal with some high offender who could not be reached by the ordinary laws or the ordinary courts. The right seemed inherent in the English people, and the Saxons, their fathers; and when afterwards the king assumed the right to grant a pardon from the judgment of conviction on impeachment, the people resisted and resented the unlawful interference, and the act of settlement put the dispute at rest by denying the right of pardon to the monarch.

This trial by impeachment did not at first have exclusive reference to offenses committed by public officers, for be it remembered that in England ordinary criminal prosecutions were prosecuted in the king's court, and in the name of the monarch and by his agents, so that if he saw fit to shield the subject from the ordinary penalty following a violation of the law, whether committed in office or out. The people had the right, through their House of Commons, to present the offender for trial to the Lords, so that it came about that impeachment could be resorted to as a method of prosecution for all crimes and offenses against the law. The Lords did, however, afterwards place this limitation on it, that they would not try any but their peers for felony.

It seems that in its uses the trial by impeachment bears a close analogy to the chancery courts. They grew up side by side. The equity jurisdiction of the chancery courts was devised to afford adequate relief in those particular cases which the law, by reason of its universality, could not reach. So, on the other hand, grew up the trial by impeachment—for the purposes of punishing those particular cases of public wrong which the ordinary law, by reason of its universality, could not reach—and particularly those matters relating to the discharge of official duties, for violations of which the law could not provide a sufficient and distinct definition; and so, in its practical operation, impeachment under the English law developed into a mode of putting out of office men who had violated their official trusts, and hence it was that it was rarely resorted to except in times of great public excitement. When the monarch refused to discharge obnoxious officials the people resorted to this means to effect their removal. It is a far-reaching weapon, and many great names have been struck down under its blows.

The great Sir Francis Bacon stood before its bar, confessing his guilt, and, at last, be it said to his credit, invoking its judgment. It put the neck of Raleigh and of Harry Vane upon the block. It struck down the evil counselors of Charles I., and it would have saved that tyrant his crown and his head had his madness and his obstinacy permitted him to take heed. Historians, sympathizing with the illustrious men who fell under it, have sought to bring the trial by impeachment into disrepute, alleging that it had been guided by the law of passion rather than of reason. But while I do not feel called on to make any defense of the particular use to which the English people have put this trial, yet I do say that there has been scarcely a man condemned by it who did not richly deserve his sentence. So far as the right itself is concerned, it was the only weapon possessed by that people against abuses in high places when sheltered by the crown, and its comparative disuse now is due largely to the enlightened policy of their later sovereigns, which furnishes an instant and effective remedy against all abuses. But the right is alive and is a paladium of British liberty; and should the time ever come when, by reason of the weakness or tyranny of the sovereign or his counselors, the safety of the State should demand its operation, it would be found as effective as in the day of Strafford and Buckingham.

This is the source then from whence comes our trial by impeachment. I do not mean that we have adopted the whole proceeding into our law; but what I mean is that the United States and the several States have each established the trial by impeachment as a method for the removal of certain officers from office, and that the idea had its origin in English jurisprudence.

But the right of removal from office for dereliction of duty is a right inherent in every free government; the trial by impeachment is only a method ordained to accomplish that end.

We will now proceed to a discussion of the first question raised in the demurrer, which in its essence is a denial of the authority of this court to try any impeachment under the Constitution and laws of this State. In answer to this we contend that impeachment under our law is a mode of trial for the removal of certain officers from office, and that our Constitution fully prescribes the mode of trial and invests this court with full jurisdiction to try the cause and render final judgment therein, and that there is no necessity for any legislation to make the remedy effectual. And that under our system of government it is not only unnecessary, but is unwise, for the Constitution or the Legislature to undertake to define the causes or grounds for impeachment. That right of removal is an absolute inherent right in the people to remove for any cause deemed by them sufficient, upon which they have purposely refrained from putting any limitations; and they have merely organized your honorable Senate into a court and invested it with the right to judge for them of the sufficiency of the cause and to pronounce judgment thereon in accordance with the power conferred in the Constitution.

The question presented in this demurrer has to some extent been raised and discussed with respect to the provision of the Constitution of the United States, the provisions of which upon this subject are as follows:

Article 1, section 2, page 5. "The House of Representatives shall choose their Speaker and other officers, and shall have the sole power of impeachment."

Article 1, section 3, page 6. "The Senate shall have the sole power to try all impeachments. When sitting for that purpose they shall be on oath or affirmation. When the President of the United States is tried, the Chief Justice shall preside; and no person shall be convicted without the concurrence of two-thirds of the members present.

Page 7. "Judgment in cases of impeachment shall not extend further than to removal from office and disqualification to hold and enjoy any office of honor, trust or profit under the United States; but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment and punishment according to law."

Article 2, section 4. "The President, Vice-President, and all civil officers of the United States shall be removed from office on impeachment for and conviction of treason, bribery or other high crimes and misdemeanors."

Article 3, section 2, page 3. "The trial of all crimes, except in cases of impeachment, shall be by jury."

Article — denies the right of pardon.

While the provisions of our own State Constitution are as follows:

Article 1, section 10. "And no person shall be held to answer for a criminal offense unless on indictment of a grand jury, except in cases in which the punishment is by fine, or imprisonment otherwise than in the penitentiary; in cases of impeachment, and in cases arising in the army or navy, or in militia when in actual service in time of war or public danger."

Article — denies the right of pardon.

Article 4, section 1. "The power of impeachment shall be vested in the House of Representatives.

"Section 2. Impeachment of the Governor, Lieutenant-Governor, Attorney-General, Treasurer, Commissioner of the General Land Office, Comptroller and the judges of the Supreme Court, Court of Appeals and district courts shall be tried by the Senate.

"Section 3. When the Senate is sitting as a Court of Impeachment, the Senators shall be on oath or affirmation, impartially to try the party impeached; and no person shall be convicted without the concurrence of two-thirds of the Senators present.

"Section 4. Judgment in cases of impeachment shall extend only to removal from office and disqualification from holding any office of honor, trust or profit under this State. A party convicted on impeachment shall also be subject to indictment, trial and punishment according to law.

"Section 5. All officers against whom articles of impeachment may be preferred shall be suspended from the exercise of the duties of their office during the pending of such impeachment. The Governor may make a pro-

visional appointment to fill the vacancy occasioned by the suspension of an officer until the decision of the impeachment.

"Section 7. The Legislature shall provide by law for the trial and removal from office of all officers of this State, the mode for which has not been provided in this Constitution."

A comparison of the provisions of our State Constitution with the Constitution of the United States will disclose an almost uniform analogy. But when we consider that the trial is largely an inheritance from the common law of England, and that its object and purposes are the same both in the Federal and State governments, we are not surprised at the close analogy. There is indeed one difference; the Federal Constitution states that "treason, bribery, and other high crimes and misdemeanors shall be cause for impeachment and removal," while our Constitution contains no enumeration of causes.

Now it will not be contended that this difference is material, or that any enumeration of causes is necessary, when we reflect that the enumerated causes are not defined in said Constitution, nor in any statute of the United States with respect to impeachment. They are wholly unnecessary, and are merely suggestive of some sufficient causes, without defining them, and they neither exclude nor limit the causes of impeachment. The term impeachment was and is a word of well understood application in the common law and of this country with respect to removal from office, and to undertake to define either its meaning or its extent is unnecessary as it is unwise. Let us see how it has been considered both in England and the United States. Woodson, writing in the eighteenth century, says it embraces:

"Such kinds of deeds as peculiarly injure the commonwealth; the abuse of high offices of trust are the most proper grounds for this kind of prosecution. Thus if the judges mislead their sovereigns by unconstitutional opinions, if any other magistrate attempts to subvert the fundamental law or introduce arbitrary power; so when the Lord Chancellor had been thought to put the seal on an ignominious treaty; a Lord Admiral to neglect the safeguard of the sea; an ambassador to betray his trust; a privy counsellor to propound or support pernicious and dishonorable measures," etc. (Woodson, 2, 602.)

Be it remembered that the common law never undertook to define the causes of impeachment; its extent was to define the mode of trial, and under this mode of trial an officer might be removed for any cause arising out of his official conduct deemed adequate by the proper Court of Impeachment.

In the impeachment of Ratcliffe, the great Seldin remarked: "It were better to examine this matter according to rules and formulations of this House;" which in this case at bar would mean, upon the great principles of parliamentary law adapted to our own condition and circumstances, as modified by the Constitution, giving it a construction equal to every emergency which may call its powers into exercise, and giving in its construction full effect in constitutional forms to the maxim it was designed to make effectual: "That the safety of the State is the supreme law." (Judge Lawrence in 6 Am. L. R., 641.)

When the Constitution of the United States was adopted, the meaning of the term impeachment in its application to the subject of removal from office was well known, and the same may be said with respect to the Constitution of our own State. For its full meaning we look to the common law of England as adopted in this country; and the provisions of the Constitution were not for the purpose of creating the right to remove by impeachment, for the right already existed, but was for the two-fold purpose of designating a tribunal to try impeachments, and to place certain limitations and modifications on it for the purpose of restricting it to the removal of certain designated officers of the government.

In Blunt's case, Bayard said: "Impeachment is a proceeding purely of a political character. It is not so much designed to punish an offender as to secure the State. It touches neither his person nor his property, but simply divests him of his political capacity."

Rawle, in his Commentaries on the Constitution, says: "Impeachments are then introduced as a known definite term, and we must have recourse to the common law of England for the definition of them." (Page 210.)

And in those remarkable articles in the *Federalist*, Hamilton, in urging the adoption of the Constitution, thus speaks of impeachment:

"The subjects of its jurisdiction are those offenses which proceed from the misconduct of public men, or in other words, from the abuse or violation of some public trust. They are of a nature which may with peculiar propriety be denominated political, as they relate chiefly to injuries done immediately to the society itself." (*Hamilton, Federalist, No. 65.*)

Again: "In Great Britain it is the province of the House of Commons to prefer the impeachment, and of the House of Lords to decide upon it. Several of the State Constitutions have followed the example. As well the latter as the former seemed to have regarded the practice of impeachment as a bridle in the hands of the legislative body upon the executive service of the government. Is not this the true light in which it ought to be regarded?"

And in the Blount impeachment trial in the United States Senate, Bayard used the following clear and significant language (referring to articles of Federal Constitution):

"And it is very evident that in none of these does an intention appear to declare in what cases an impeachment shall be sustained, or to what persons it shall be confined. On this subject the convention proceeded in the same manner, it is manifest they did in many other cases. They considered the object of their legislation a known thing, having a previous definite existence. They have given it to us, not as a thing of their creation, but merely of their modification. And therefore I shall insist that it remains as at common law, with the variance only of the positive provisions of the Constitution."

Old John Adams maintained successfully, notwithstanding the charter of Massachusetts Colony contained no right of impeachment, that it was inherent in the colony as a government to remove, by impeachment, judges for misbehavior in office, and while he did not carry the doctrine to the extent that when articles were presented that it effected a suspension of the accused from office pending the trial, yet when the articles were presented in the Colonial Assembly against a judge, and he undertook to hold his court pending the trial, the sturdy yeomanry of the old Bay Colony gave a practical illustration of their construction of the extent of impeachment by refusing to take the oath to serve as jurors in his court, on the sole ground that his powers were suspended by the impeachment.

Judge Miller, in commenting on the value and necessity of impeachment, remarked: "One of the most important powers confided to the Senate is that of trying impeachments. As already suggested, this power has been rarely called into operation. When we consider that it is the only mode of removing from his place an officer in the government during the term of his office for which he is elected or appointed, except so far as that power may be reposed in the President as a part of his power of appointment to office. In other cases, which are by far the most numerous, when it would be important to remove an officer, it can only be done by impeachment. The result of this has been that the expense, the delay, the cumbersome method of the process of impeachment and the interference which it causes with the other functions of the Senate, while the trial is in progress, have all contributed to give immunity to men in high offices who ought to have been removed for the good of the service to which they belonged." (*Miller on Const., p. 213.*)

As to the extent and character of impeachment, Curtis, in his *History of the Constitution*, says: "Although an impeachment may involve an inquiry whether a crime against any positive law has been committed; yet it is not necessarily a trial for crime; nor is there any necessity in the case of crimes committed by public officers for the institution of any special proceeding for the infliction of the punishment prescribed by the laws, since they, like all other persons, are amenable to the ordinary jurisdiction of the courts of justice in respect of offenses against positive law. The purposes of an impeachment lie wholly beyond the penalties of the statute or the customary law. The object of the proceeding is to ascertain whether cause exists for removing a public officer from office. Such a cause may be found in the fact that either in the discharge of his office or aside from its functions, he has violated a law or committed what is technically denominated a crime. But a cause for re-

removal from office may exist when no offense against positive law has been committed, as when the individual has from immorality, or imbecility or maladministration, become unfit to exercise the office." (Curtis History of the Constitution, vol. 2, p. 260.)

Prof. Theodore Dwight announces his conclusions as follows: "The Constitution of the United States simply refers to the subject of impeachment without defining it. It assumes the existence of this mode of trial in the law, and silently points us to the English precedents for knowledge of details." (Am. L. R., 257.)

Chancellor Sanford, in speaking of the nature of the trial by impeachment, said: "Impeachment of public officers, a peculiar species of accusation, made and tried in a peculiar manner, are to extend no further in their effect than to discharge an officer from his trust and to render him incapable of holding office; but if the cause for which the officer is thus punished is a public offense, he may also be indicted, tried and punished, according to law." (Chancellor Sanford, in *Barker v. People*, 3 Cowan, 686; 15 Am Del., 322; 79 Ky., 42.)

And this is the more significant in the light of the provisions of the Constitution of the State of New York as follows:

Article 6, section 1. "The Assembly shall have the power of impeachment by vote of a majority of all the members elected. The court for the trial of impeachment shall be composed of the President of the Senate, the Senators," etc.

Meecham, in his very excellent work on Public Office and Officers, says:

"An impeachable high crime or misdemeanor is one in its nature or consequence subversive of some fundamental or essential principle of government or highly prejudicial to the public interest, and this may consist of a violation of the Constitution, of law, of an official oath, or of a duty by an act committed or omitted, or without violating a positive law by the abuse of discretionary powers from improper motives or for an improper purpose. Whether the act in question is such an act is solely for the Senate to determine." (Meecham on Public Office and Officers, p. 472.)

Judge Lawrence, in a very able article in the American Law Register, published about the time of President Johnson's trial, discusses the whole subject of impeachment, and from this article we make the following pertinent extracts:

"Here impeachment is only designed to remove unfit persons from office." (6 Am. L. R., 644.)

"It would be absurd to say that impeachment here is a mode of procedure for the punishment of crime when the Constitution declares its object to be *removal from and disqualification to hold office*. * * * Subject to these qualifications (those in the Constitution) and adopting the recognized rule that the Constitution should be construed so as to be equal to the occasion for its exercise, and to accomplish the purpose of its framers, impeachment remains here as it was recognized in England. These abuses are not guarded against in our Constitution by limiting, defining or reducing impeachable crimes, since the same necessity existed here as in England for the remedy of impeachment.

"It will be observed that the '*sole power of impeachment*' is conferred on the House and *the sole power of trial* on the Senate. These are the only restrictive clauses, and they do not limit impeachment to crimes and misdemeanors, nor is it elsewhere limited.

"The framers of our Constitution, looking to the impeachment trials of England, and to the authorities on parliamentary and common law, and to the Constitutions and usages of our own States, saw that no act of Parliament or any State Legislature ever undertook to define an impeachable crime. They saw that the whole system of crimes as defined in acts of Parliament and as recognized at common law, was prescribed for and adapted to the ordinary courts.

They saw that the High Court of Impeachment took jurisdiction of cases when no indictable crime had been committed, in many instances, and there were then as there yet are 'two parallel modes of reaching some but not all offenders,' one by impeachment the other by indictment." (646.)

"With these landmarks to guide them, our fathers adopted a Constitution under which official malfeasance and nonfeasance, and in some cases mis-

feasance, may be the subject of impeachment, although not made criminal by act of Congress or so recognized by the common law of England or by any State of the Union. They adopted impeachment as a means of removing men from office, whose misconduct imperils the public safety and renders them unfit to occupy official position.

"All this is supported by the elementary writers, both English and American, on parliamentary and common law; by the English and American usage in cases of impeachment; by the opinion of the framers of the Constitution; by contemporaneous construction, all uncontradicted by any author, authority, case or point, for more than three quarters of a century after the adoption of the Constitution." (64.)

"The Constitution contains inherent evidence, therefore, that as to judges, they should be impeachable when their behavior was not good, and the Senate are made the exclusive judges of what is bad behavior. The words good behavior, as borrowed from the English laws, have been construed there in a way to enlarge the scope of impeachment to a wide range. They were first introduced into an English statute to procure the removal of officers who on trial might prove too ignorant to perform their duties." (653.)

"It would seem clear that impeachments are not necessarily limited to acts indictable by statute or common law, and it *would be impossible for human prescience or foresight* to define in advance, by statute, the necessary subjects of impeachment. The Constitution contemplated no such absurd impossibility. It may be said there is danger in leaving to the Senate a power so undefined. It is because of this danger that the power has been limited as it has been in the Constitution, and experience has shown that the limitations are more than sufficient." (658.)

"The system of impeachment is to be governed by great general principles of right, and it is less probable that the Senate will depart from these than that the whole Legislature would in the enactment of a law." (658.)

I think we can safely state the proposition, that under our system the right of impeachment, or, in other words, the right of the people to remove from office, is absolute and inherent; that it is a natural political right in a free and representative government; that with us it exists to the full extent, and fuller than at common law, except in so far as it is limited, surrendered and modified by the Constitution. That it is not a matter in which a statute may be invoked, but that the purpose of the constitutional provisions as before stated were, first, to name the tribunal; second, to modify and limit the right. The chief modification and limitations are as follows: First. It is impliedly restricted to the removal of officers from office; second, the punishment is limited to removal from office and disqualifications to hold any office of honor, trust or profit under the State; third, if the cause of removal be a crime the party may still be prosecuted in the ordinary manner.

Our Constitution wisely places no limitation upon the sovereign right of the people to impeach an officer for cause. And if our Constitution be not self-executing, why is not the Constitution of the United States for the same reason non-effective? It does not define the cause of impeachment, but it does enumerate some general causes, all of which are included in the term impeachment. But if this general enumeration means anything at all, it means to limit the extent of impeachment; for no man will contend that this enumeration in any respect defines the causes or grounds for impeachment. But if it should be held that these words are descriptive and definitive of the term impeachment, the necessity for their use may be found in the fact that the Federal government is a government of defined and enumerated powers, while our State, composed of the whole people, is an independent sovereign, and all powers of government are inherent, and are neither granted nor delegated, and a limitation would have been as foolish and useless as it would be dangerous.

The respondent, by his demurrer, boldly asserts that he is above and beyond the reach of the people and the law in his possession of the high office and trust granted to him by the people of this State, that his tenure of office is a vested and irrevocable right; but we say that the people granted him this office upon the condition that he would fulfill its duties with competency, skill and faithfulness, according to his oath, to the Constitution and

laws of the State. The same Constitution which creates the office, prescribes its duties and requires a most sacred oath for their faithful discharge, and last, but not least, provides a method by which the unfaithful agent may be removed. The great principle of principal and agent has here an apt illustration, and the agency may at any time be revoked by the impeachment of the agent. In effect, in their Constitution the people say to the officers therein mentioned: "You may be removed from office by the proceeding of impeachment, on presentation of the House, for any cause deemed sufficient by two-thirds of the members of the Senate present."

The general procedure we get from the common law, and the precedents of the common law are persuasive as to what causes may or not be sufficient to sustain an impeachment; but they are persuasive only, for under our system an officer may not only be impeached for those acts for which he might be impeached at the common law of England, but also for such other acts as our advanced and complex civilization bring within the spirit and purpose of this trial, to the end that the safety of the State may at all times be assured. And this, we hold, is within the spirit of that common law of England which has become the foundation of the jurisprudence of this State. And this common law of which we speak, embraces not only what is ordinarily termed the "*lex scripta*" and the "*lex non scripta*" of England, at the time it became a part of our system, but the "*lex parlamentaria*" as well. And this common law of which we speak came to us, not as a dead petrification, but as a living, growing principle, with broad and deep foundations, upon which the superstructure may continue to expand in sympathy and harmony and unison with the infinite possibilities of our grand civilization. And this right of impeachment under our law is as ample as the necessity of any case may require, and limited only by the judgment and will of the House and the Senate.

There are no limitations in the Constitution or the law upon the jurisdiction of this court. It is the supreme tribunal before which the commons of this State have the right to present for trial certain high officers of this State as unfit and unfaithful public servants. I use the terms unfit and unfaithful advisedly. The first to distinguish those acts whether pertaining to the duties of office or merely to the conduct of private citizenship (this extent of impeachment to personal conduct is not an issue in this case, and is merely suggested as coming properly, at times, within the jurisdiction), whether occurring before election or after election, which condemn an officer as unfit to be trusted with office. The second to characterize more particularly those official acts performed in and about office which render it unsafe to the public welfare to longer continue an officer in public position.

As authority for the proposition that the people of this State are not helpless victims of official dereliction, and that the power to preserve their government is inherent in the people, I refer to the following section of the Bill of Rights:

Article 1, section 2. "All political power is inherent in the people, and all free governments are founded on their authority and instituted for their benefit. The faith of the people of Texas stands pledged to the preservation of a republican form of government; and, subject to this limitation only, they have at all times the inalienable right to either reform or abolish their government in such manner as they think expedient."

I desire to notice briefly some of the arguments advanced by the counsel for respondent in support of this branch of the demurrer. A fundamental error in this whole argument is the assumption that this trial by impeachment is for the punishment of crime, and from this arises, we think, largely, his misconception of the question of impeachment under our law. We admit that at common law criminal offenses could be prosecuted by impeachment, but such has never been the law in America, for here we do not have to wait on the pleasure of the king's courts to punish offenses, but the ordinary courts of the land have and exercise full and ample jurisdiction for the punishment of crime. And the operation of impeachment has been in all of the States limited to removals from office; and it is not a prosecution for crime, but a proceeding for the removal of an officer, and as such it has become a favorite and universal remedy in all of the States of the Union. If it is a simple prosecution for crime, why should its effect be expressly limited by the Constitution, and why should it be expressly provided that

if the cause for removal was a crime, that the trial by impeachment was no bar to a prosecution by indictment for the crime. Now, when it is established that impeachment is not a prosecution for crime, but only a constitutional method provided for the removal of certain State officers, we are relieved of a good deal of the effect of counsel's argument.

We admit that a crime may be a sufficient cause for impeachment; so may a violation of the Constitution or laws of the State, or any other flagrant breach of official duty, but the proceeding is not to punish for the act, for the act is merely the incident, and is not accounted for or settled by the judgment of impeachment.

Our contention on this subject is sustained by an unbroken line of authorities, as shown from citations heretofore read to the court, and no American law writer of respectability has ever questioned it except Prof. Dwight, and he does so to only a limited extent, and on account of the peculiar verblage of the Constitution of the United States, which, he maintains, limits the causes for impeachment, but no such limitation will be found in our law.

We need only refer to the fact that under the authority of all the cases tried before the United States Senate, the position of the counsel for respondent in this case has been presented to the court and has never been sustained, but has been uniformly denied, and the doctrine clearly asserted and maintained by the court that impeachment was not a prosecution for crime, but merely a proceeding for removal from office for causes involving breaches of official duty. Sometimes the causes were criminal, at other times merely breaches of duty. The cases have been as follows:

1. Blount. No crime charged; dismissed.
2. Pickering. No crime charged; convicted.
3. Chase. No crime charged; acquitted.
4. Peck. No crime charged, demurrer overruled; acquitted.
5. Humphries. Crime charged, perhaps; convicted.
6. Andrew Johnson. No crime charged; tried on the facts; acquitted.
7. Belknap.

Now, counsel takes great consolation in the fact that five out of seven of these respondents were acquitted, and he incorrectly assumed that they were acquitted on the ground presented in this demurrer; but he forgot to state that in no case was there any demurrer sustained except in the Blount case, where it was not sustained on the ground maintained here, but upon the opinion of the court that Blount, a United States Senator, was not a civil officer within the meaning of the Constitution; but, if I am not in error, the case went off on the ground that Blount had been expelled from his office by resolution of the Senate, and not being in office could not be impeached. So we see that out of the seven cases six were tried upon the facts, the demurrers not being sustained. How then can it be argued from these cases that the demurrer now presented has ever been sustained? The same contention was made in the case of Judge Prescott in Massachusetts, and the St. Julian Cox case in Minnesota, and not sustained in either, but overruled in both, and a judgment of conviction pronounced.

So we may laugh at counsel when he defies us to find an article in the Penal Code defining an impeachable crime. The Criminal Code is not the place to find the subject of impeachments; it belongs in the Constitution, and we do not find it there, and you cannot put a statute above the Constitution. But counsel urges that it is non-active, because impeachment is not distinctly defined therein. He says our Constitution is non-executing, and he quotes Cooley's definition of a self-executing provision, "If it defines an offense and affixes a penalty therefor." Now, if our Constitution be inactive for the reason it "fails to define an offense," so is the Constitution of the United States, for, while it does enumerate some causes for removal, it does not define any of the causes enumerated; and the fact was, there were no statutes in existence defining them, and it has never been found necessary to define the causes for impeachment in the Federal statutes. The fact being that the word *impeachment* was a term the import of which was well understood, and it was unnecessary to undertake to define it.

Another error into which counsel falls is his assumption that this court is a court of limited jurisdiction. This position cannot be maintained, for the fact is that it is a special court with general jurisdiction. So unlimited in fact is the jurisdiction of this honorable court that no appeal can be taken from

its judgment and no pardon can be extended from its conviction. And it needs no legislation to define its powers, for they are granted in the Constitution.

And more, it seems that the constitutional convention feared that some future Legislature might be misled by the fallacious argument of the distinguished counsel, and might conclude that it was intended that legislation was necessary to make effective this trial by impeachment, so, out of abundant caution, they added section 7 as follows: "The Legislature shall provide by law for the trial and removal from office of all officers of this State, the modes for which have not been provided in this Constitution." Thereby not invoking legislation to make impeachment effective as counsel assumes, but telling the Legislature to keep its hands off of the subject of impeachment, because that mode of removal was already provided for in the Constitution, but to expend their wisdom on a plan to remove those other State officers for whose removal no provisions have been made in the Constitution. This provision was no doubt suggested by the fact that new State officers might from time to time be created, as for instance the Commissioner of Insurance, Statistics and History, and the judges of the Courts of Civil and Criminal Appeals mentioned by counsel, and whose removal by impeachment could not be provided for in advance.

Let me say further that my belief is that under this section 7 the Legislature of this State is prohibited from legislation on this subject of impeachment, and if the provisions of our Constitution are not self-executing the Legislature has no power to assist them by statutory enactment, and the remedy rest solely with the people in their sovereign capacity to put it into effect by constitutional amendment. The right of removal from office by impeachment is inherent in the people, and they have designated the Senate as the tribunal to sit in judgment.

The foregoing observations on this section 7 will help us to answer the argument made by counsel and based on the remarks of Judges Roberts and Clark in the cases cited and so earnestly presented. (And let me observe parenthetically, that I would be disloyal to my profession as a lawyer if I did not yield hearty assent to the glowing eulogy pronounced upon these eminent judges by counsel for respondent. Their position in the Pantheon of judicial fame is assured, and no word of mine could add to their lustre. One in his old age the object of the veneration and love of the whole people; the other his worthy disciple, now in the full vigor of his splendid powers, an unyielding and faithful expounder of the Constitution and laws of his State).

The case of Trigg and the other case both arose under the statutes passed by the Legislature providing for the removal of certain State officers under the authority of other sections of the Constitution. And the statutes were sustained because the Legislature had pursued the legislative injunction in enacting the statute; but neither had the slightest reference to impeachment, because they were not impeachable officers. And the section from the old article 5, section 9 of the Constitution was cited by Judge Roberts to illustrate the point that said article was not included in the law of impeachment, and was not self-executing, but required some legislative action to put it in force under section 7. And in this very case of Trigg v. State, Judge Roberts expressly recognizes the right and power of impeachment in this State by referring to it as "the old and well established trial by impeachment."

Counsel, after making a long argument from decisions made under the statutory provisions for the removal of certain district and county officers, after illustrating his position that the cause of impeachment should be defined in the statute, and then after finishing, for his purpose he solemnly warns you that the signboard is up that those preserves are not to be trespassed on by the relators. The gentlemen may rest at peace in their possession, and get all of the comfort out of it they can;—we do not rely upon those statutes except to show the inconsistency of respondent's position. Our position is on higher, firmer ground.

Now counsel propound the following question: "Why is it that the Constitution says 'that certain officers may be addressed out of their office, and defines the causes for their removal?'" And he argues from this that by analogy the causes for impeachment should be defined. The answer is

plain. Impeachment is a term the meaning, purpose and extent of which was well understood and known. Not so with address, for while it is true it had perhaps in a few rare instances been resorted to by parliament, its extent and nature were not established and known, and it never became a part of the body of the common law, and its extent and purpose was a creature of the Constitution and the statute.

I need hardly suggest a further answer, to the effect that the constitutional provision on the subject of address does not define the causes, it merely enumerates them.

While I am on the subject of address, I will reply to another argument advanced by counsel—based on the language of the provision, which is as follows:

Article 15, section 8: "The judges of the Supreme Court, Court of Appeals and District Courts shall be removed by the Governor on the address of two-thirds of each house of the Legislature, for willful neglect of duty, incompetency, habitual drunkenness, oppression in office, or *other reasonable cause* which shall not be ground for impeachment." From which it is urged by counsel that neither "willful neglect of duty, incompetency, habitual drunkenness or oppression in office" is cause for impeachment, because they are not stated to be causes in this section of the article.

We reply to this: First. That the general subject of impeachments was not under consideration under said section, but merely the address of certain named officers; and if the language "which shall not be sufficient ground for impeachment" has reference to all of the causes enumerated in the section, then its application must be limited to the subject under consideration—that is the officers named.

Second. We assert, and a reading of the section in question will sustain us, that the words "which shall not be sufficient ground for impeachment" relate solely to the words "or other reasonable cause," and do not reach back and include the other causes specially enumerated in the section. So that they are in no respect a limitation upon the right even to impeach the officers named for "willful neglect of duty, incompetency, habitual drunkenness and oppression in office," and especially they do not include officers not named in the section. And the remedy by address was never intended to supersede impeachment, but was merely an additional and cumulative remedy, applicable to certain officers therein enumerated.

In every case of impeachment tried before the Senate of the United States, the counsel for respondent have contended that the Constitution of the United States restricts the causes of impeachment to "treason, bribery and other high crimes and misdemeanors" in their criminal aspect. It has never been contended that that instrument defines the causes for impeachment, but that it enumerates certain causes for the purpose of restricting and limiting impeachment; but this narrow construction was never sustained by the Senate. But the makers of our Constitution were aware of this discussion, and while they almost copied the provisions of the Federal Constitution with respect to impeachment, they significantly omitted those words of restriction and limitation in order that this high right of the people of this State might be fully preserved.

An examination of the constitutional provision of the several States cannot fail to be an instructive illustration on this point, and we submit the following statement taken from the Constitutions of a number of the States on this subject of impeachment:

For "misdemeanors in office": California, Kansas, Florida, Maine, Missouri, Nebraska, New Jersey, Ohio, Pennsylvania.

No cause enumerated: Texas, Georgia, Illinois, Louisiana, Maryland, North Carolina, Rhode Island, South Carolina, Connecticut.

"For misdemeanor or malfeasance in office": Ohio, Nevada.

"Treason, bribery or other high crimes or misdemeanor in office": United States, Delaware, Mississippi.

"Maladministration": Vermont.

"Misconduct and maladministration in office": Massachusetts.

"Corrupt conduct in office for crimes and misdemeanors": Michigan.

"Bribery, corruption, malpractice or maladministration in office": New Hampshire.

"Maladministration, incompetency, corruption, neglect of duty or other high crimes and misdemeanors": Virginia, West Virginia.

"Whenever such officers commit any crime in their official capacity which may require disqualification": Tennessee.

"High crimes or misdemeanors or malfeasance in office": Colorado.

"Crime, incapacity or negligence": Indiana.

"Impeachment prohibited": Oregon.

It will be observed from the foregoing that no Constitution has undertaken to define the causes of impeachment. Some of them have enumerated causes, but have not defined them, and every cause enumerated in any of the foregoing Constitutions is included within the meaning of the term "impeachment," and the only possible effect of the enumeration would be to not define but to restrict the meaning of the term impeachment. And we further observe that no less than nine of the States of this Union have accepted and adopted the term impeachment in its full import, and among that number our own State of Texas.

And an examination of the statutes of these States, in fact of all the States of this Union, will disclose the fact that, with perhaps the single exception of Arkansas, no State has ever undertaken to assist the Constitution in defining impeachment.

This is the concurrent, unbroken evidence of American constitutional history, and it cannot fail to have its weight before this intelligent tribunal. Let us next examine the history of our own State on this question. Texas has had seven Constitutions.

1. Provisional, 1835.
2. Republic, 1836.
3. That of 1845.
4. That of 1861.
5. That of 1866.
6. That of 1869.
7. That of 1876.

And the same provisions with respect to impeachment which are in our present Constitution have been without any material variation in each of the others, except that of the Republic, which followed the Constitution of the United States, and none of them ever undertook to define impeachment or to provide for statutory assistance to the Constitution. They moved all along upon the broad line that the right to impeach was inherent in the people, and nothing was required in their Constitution, except to designate a tribunal and modify the right in such respect as they deemed proper. There have been three impeachment proceedings in this State.

1. Judge Russell before the Twelfth Legislature: The record is meagre, but we have the articles and the demurrer. The articles charged no crime, and, in fact, they almost failed to charge anything. The demurrer was not to the jurisdiction of the court as we have it here, but to the matter in the article. The demurrer was sustained. This case certainly does not serve as a precedent, if any act of the Twelfth Legislature could be dignified by such recognition.

2. Judge Scott by the Thirteenth Legislature: A demurrer was interposed in this case, but neither the demurrer nor the case was ever decided. There is some curious political history connected with this case, as I have it from a distinguished member of that Senate, and who now adorns the highest judicial bench in this State. It seems that Scott was a very corrupt judge, and the articles charged many acts of corruption. He was a Republican. The Senate was about evenly divided between the Democrats and Republicans; the Democrats nominally had a majority of perhaps one, but three of their members were only alleged Democrats. The demurrer was presented and the facts were well known, but the Republicans were determined to save Scott, and if necessary to nullify the Constitution to do it; and it became known to the Democrats that the Republican Senators and the alleged Democrats would vote to sustain the demurrer on both grounds; first, that an officer could not be impeached under our Constitution, and, second, that corruption and oppression in office were not impeachable. The Democrats determined that no such infamous decision should be rendered if by any means in their power they could prevent it. They resorted to parliamentary tactics, and finding some of the opposition absent they, on

motion of Senator Finley, a member of the present House, postponed the trial of the case for about a year, and when a motion to reconsider and to proceed with the trial was afterwards made, they sat mute in their seats and refused to vote, thus breaking a quorum and saving the honor of their State. Before the 12th of February, 1874, arrived Scott died, and the impeachment abated.

3. The trial of Judge Chambers before the Fourteenth Legislature in 1874: In this case thirteen articles were presented, and demurrers were interposed, setting up substantially the points presented by respondent in this case (Senate Journal, 14th Leg., p. 137), and upon full hearing they were each and all overruled by the court by a vote of 21 to 2. (Senate Journal, 14th Leg., p. 137).

This then is a precedent of value and ought to settle the questions urged in this demurrer. And to show you that the effect of these cases was to settle this question against the demurrers interposed in this case, I need only refer to the fact that in 1875 a Constitutional Convention was held in this State—these three impeachment trials in which these questions had been presented were first in the minds of the people and the members of that Convention. Indeed members of the High Courts of Impeachment which sat in these cases were members of that very Constitutional Convention. And yet that Convention did not see fit to define impeachment in the Constitution and expressly prohibited any Legislature from undertaking to define it. Then it does occur to me that the precedents and the historical wisdom in this State are conclusive on the question of the powers and jurisdiction of this honorable court.

I may mention, as a matter of history, that the Commissioner of the General Land Office was not subject to impeachment in this State until the Constitution of 1876 was adopted, and the fact that the men who drafted that instrument had the forethought to extend this remedy so as to include the Commissioner rebuts the suggestion of counsel for respondent that they acted carelessly and without deliberation in the preparation of the article on impeachment.

But we do not mean to assert that this trial by impeachment has no incidents of a criminal trial; on the contrary, it has many of the characteristics of such a trial. Those are inherited largely from the common law, but the purpose of impeachment under our law has never been to try an offender for crime for the purpose of inflicting a punishment, but it has become distinctively a civil proceeding to remove certain officers from office, and whatever follows the removal from office is merely incidental to the removal itself, and is not the object for which the proceeding is instituted. It is true that the cause for removal may lie in a penal act; so it may lie in any other gross and serious violation of official duty, and the purpose of the trial is not to punish the citizen for the penal act, but to rescue the office from the hands of an unfaithful officer. He must account for the crime, if this be the foundation of the impeachment proceeding, in the ordinary courts of the country.

But counsel seems to stumble over the words "crimes and misdemeanors," which are so frequently used in speaking of impeachment, and he attempts to confine the meaning of these words to such acts as are "crimes" defined as penal offenses under our law, and to which the statute has affixed a punishment. This construction can not be sustained, for these words can not be so limited, but must be understood in their largest sense to mean any act or omission (whether penal or not) which is a violation of the duties of office; as to whether such act is an impeachable act must be left to the judgment of this court. I can conceive how an infraction of official duty might not be considered of sufficient gravity to justify a removal, but a continuous and persistent repetition of such acts might be sufficient. The point I desire to make is that the sufficiency of the cause is by the Constitution vested in the discretion of this court.

Now as to whether the acts charged in the articles are impeachable acts is for your determination, untrammelled by any confusing construction as to the character of this court, or as to whether the act is a penal crime, a political crime, or a crime against the duties of an office. Most serious violations of important duties with respect to the sale and lease of the public school lands are charged. You will observe that the law has not left the disposi-

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tion of these lands to the unlimited discretion of the Commissioner, but has carefully provided the rules by which he shall be governed. The acts of 1887, with the amendments of 1889 and 1891, prescribe the manner in which these lands shall be leased and sold, and these articles charge that in direct violation of these laws, the Commissioner has leased and sold these lands. Impeachment is the sword by which the people must protect themselves from official unfaithfulness and unfitness, and that sword they have wisely placed in your hands, believing that you would not hesitate to strike the blow whenever the public safety demanded it. They have not limited their right to the technical construction for which respondent contends. Consider for a moment the monstrous consequences which might follow such a limitation. The Governor might with impunity pardon every felon in the penitentiary, and yet he would violate no penal statute. The Treasurer might refuse to honor the State's warrants, and yet commit no offense. The Commissioner might close the doors of the land office and refuse to transact the business of his office, and still no penal crime would be committed. In fact, the purposes of the government might be arrested, and yet not even a finable offense committed, nor could the State get relief by any sort of procedure in the ordinary courts. And hence the necessity and the wisdom for the jurisdiction of this court. And since the foundation of this government, the people of this State have reposed in the confidence that their Constitution was adequate for the protection of the public welfare; and shall you tell them that this repose has been the repose of folly and ignorance; and that in their blindness they have created certain high offices and placed them so high that the law can not touch them? If such be your judgment, the people of this State will fling away your trial by impeachment as a sham and a mockery in a free government.

There remains but one other question for me to discuss, and that is, Did the people of this State, in re-electing the Commissioner, condone his acts committed during his former term of office?

Respondent has discussed this question to such a limited extent that we are not even favored with his positions on the question, and we shall content ourselves with a very brief statement of our view of the law:

1. If this be a criminal court and this proceeding is for the purpose of punishing a citizen for crime, certainly respondent can not plead his re-election as a bar to his prosecution, because neither the Constitution nor the law prescribes any period or act of limitation. Of course you will not understand us as agreeing to any such unreasonable doctrine as to the character of this court or of this proceeding. We merely answer the respondent with his own kind of reasoning, and this ought at least to satisfy him on the subject.

2. At common law there was no such limitation as this upon the trial by impeachment, for you will recollect that many English trials, and notably that of Warren Hastings, took place long after the office had been vacated, and we do not think the question has ever been decided in America in any impeachment trial. The nearest cases in point are: First, the Blount case, in which he had been expelled from the Senate before articles were presented and the record in that case leaves it doubtful as to whether his case was dismissed for that reason or because he was not a "civil officer of the United States." Second, Belknap, who resigned his office about the time he was presented, and also urged among other defenses that he was "out of office" and could not be proceeded against by impeachment. The point was not directly decided, but he was acquitted on the trial.

So it seems to be somewhat an original question, and we would ordinarily be governed by the common law rule unless that rule has been modified by our Constitution, or our statutes, or by the purposes for which impeachment is used under our system of government.

(1.) The Constitution contains no such limitation. (2.) The statute contains no such limitation (even if the State Legislature could under our Constitution put any such restriction on the right, which is doubtful). It will be observed that there is an article of the Revised Statutes, 3415, which says that no officer shall be removed from office for acts occurring prior to his election, but that article occurs in the chapter relating to certain county and district officers, and has no reference to anything except the subject matter of the chapter, and you remember how careful counsel for respondent

ent was on yesterday to tell the court that the provisions of that chapter were limited to the subjects therein mentioned. He told us the sign board was up and that we must keep off of the grass. That is a detached and isolated section. So we can safely assume that the statute does not recognize this condonation. (3.) The remaining enquiry then is, does the nature of impeachment as applied in the United States impose such a limitation? We cannot furnish you any direct precedents but think we can produce some analogies which may be of service.

High in his work on Extraordinary Legal Remedies, in speaking of this question as it related to removals from office under statute, says:

"And when it is shown by the action that the grounds relied upon to justify the removal relate to acts committed during a prior term of office, involving no moral delinquency, and which, if violations of duty at all, were well known to the appointing power at the time reappointment, is regarded as a condonation of the offense." Sec. 69.

The Supreme Court of Wisconsin, in case *State v. Common Council*, 9 Wis., p. 254, say as follows: "We do not say that in no case could acts done during a prior term justify a removal. Thus, if after a treasurer was re-elected it should be discovered that during his prior term he had committed a defalcation and been guilty of gross frauds in the management of his office, it might, perhaps, be just grounds for removal. But when the charges show nothing more than a mere neglect of some formal duty involving no moral delinquency, and which, if violations of duty at all, must have been known to the appointing power, we do not think when they relate entirely to acts during a prior term of office they constitute no cause in law for the removal of an officer, for such offenses, if offenses at all, his reappointment should be regarded as a condonation."

The complete purpose of impeachment under our law is to protect public office from either unfaithful or unfit administration, hence it not only removes, but it may disqualify the accused from holding office in the future. And we think this question of disqualification a material one in determining the question of condonation. And again, condonation implies that the party condoning at least knows what acts are being forgiven. So we think the true doctrine, perhaps, is this: that the people may condone official faults by re-electing an officer, provided they had full knowledge of the facts at the time. Certainly the doctrine could not be extended any further; for certainly it could not be held that the people have forgiven those offenses of which they knew nothing, and we think the authorities bear us out in this construction, even, indeed, if they do not go further. If the above rule is correct it necessarily follows that he who pleads condonation must prove it. So it becomes not so much a question of law as one of fact, and the burden is on the respondent to show the facts evidencing condonation.

In conclusion, gentlemen, the managers for the House now submit the questions of law to you for determination. They are questions of the utmost moment and gravity, and reach beyond the respondent at the bar and go to the very foundations of this government. The people of this State have an abiding trust and confidence in their Constitution, and they also have faith and reverence for your honorable court. They are patient and will not be fretted into a passion and discontent by your judgement, however destructive it may be to their rights, but on the morrow they will set to work with willing hands and faithful hearts to make secure in their Constitution those inalienable rights which they believe to be inherent in them as a free people. They would not have any considerations of policy or expediency to move you from the line of your duty, they are too great and noble for that. But until you declare it otherwise their faith in the power and jurisdiction of this court to hear and determine this cause will remain unshaken.

At the conclusion of the above, Senator Greer sent up the following:

TO DEFENDANT'S COUNSEL:

(a) I understand your position to be that unless the defendant has violated some "penal" statute of the State that he is not subject to impeachment. Suppose after he had taken charge of his office he had shut it up and left it, refusing to attend to the business. What remedy would the State have?

(b) Is not the tenant, when he violates his contract or refuses to carry it out, subject to "ouster" by the landlord?

(c) Is not the occupant of an office a tenant of the people?

(d) If the officer violates his oath of office, or contract, and runs the office contrary to the object for which it was created, have not the people (his landlord) the right to "oust" him?

(e) If so, what remedy have they?

Senator Simpson moved that the Court adjourn to 10 a. m. to-morrow.

Senator Imboden moved that the Court adjourn to 8:30 to-night.

The Court adjourned to 10 a. m. to-morrow.

SENATE CHAMBER, AUSTIN, TEXAS, April 27, 1893.

The High Court of Impeachment convened as per adjournment.

Quorum present.

President Pro Tem. Kearby presiding.

Hon. W. M. Walton proceeded to close the argument for the defendant, pending which the following questions were propounded, to-wit:

QUESTIONS.

By Senator Swayne:

If this is a criminal proceeding, why is it that article 15, section 4, reads that "a party convicted on impeachment shall also be subject to indictment, trial and punishment according to law?"

By Senator Hutchison:

Bills of attainder being prohibited in this country, has not impeachment therefore in this country been construed to embrace a class of offenses in this country not known to common law and the statutory law?

By Senator Dickson:

Is not the defendant charged with having filed a false land lease? If so please define the offense.

By Senator Greer:

I understood your answer to my question to be, "If the Commissioner should shut up his office and refuse to perform the duties of his office as contemplated by his oath," "that the remedy of the State was by writs of injunction and mandamus, and that, if he refused to obey the writs he could be lodged in jail."

Please explain article 3433a, Sayles' Statutes, page 171.

By Senator Imboden:

Could an executive officer be impeached for promising an office or any valuable thing prior to his election? If not, what recourse have the people for such an offense?

On motion of Senator Lewis the Court adjourned to 3 p. m. to-day.

AFTERNOON SESSION.

The Court reconvened as per adjournment, Hon. W. M. Walton proceeding with his argument, pending the conclusion of which the following questions were propounded, to-wit:

QUESTIONS.

By Senator Agnew:

Have we any record of charges of impeachment being sustained in States having Constitutions like ours, that is under Constitutions not naming the acts or offenses for which impeachment will lie?

By Senator Atlee:

The power to appoint implies the power to remove for cause. The people have the power to appoint and have appointed the officers whom they have elected. The House of Representatives, in the name of the people, by articles of impeachment, say an officer should be removed. The Constitution has provided a court to determine whether or not the causes alleged for removal are sufficient. Is it not, then, within the breast of the Court so constituted to say whether or not the causes alleged are sufficient? The Governor having the power to appoint certain officers, may remove them

for reasons to him deemed sufficient; does a different rule restrict the right of the people to remove an officer whom they have appointed by election when the right to impeach the officer is reserved by the Constitution?

Hon. W. M. Walton concluding his argument, the whole was as follows:

Mr. President and Senators, sitting as a High Court of Impeachment:

No man, perhaps, can occupy the position that I do at this moment without feeling the responsibility which rests upon him.

A citizen of your State, with established character for honesty, endorsed by the people, having passed an honorable life among us, and now charged with high crimes and misdemeanors, has rested his defense, his reputation, the happiness of his family, his future in the world, partly in my hands. If I fail to do my duty; if I leave anything undone that I ought to do; anything which God has given me the ability to do, that an upright man, responsible lawyer and patriotic citizen can do, having in view the Constitution and laws of my country; if I fail in any of these particulars, I would be unworthy to be trusted in responsible relations by my fellow citizens. I am unlike the managers on the other side. While they have honorably and fearlessly discharged their duties; freely and honestly brought for your consideration the whole of the law as it could be reached by them, after long search and industrious effort, to show to you that there were good grounds for the prosecution, and adequate causes why the respondent in this case should be removed from his position, his franchises and rights as a citizen taken from him, and he deprived of the valuable property which the people of Texas have bestowed upon him. If they fail, if they have not brought to and for your consideration sufficient grounds, sufficient law and sufficient reason, they but go out into the world with nought resting upon them save simply having failed to accomplish the ends and objects of the prosecution; whereas, if I fail, this old man goes down, his children and his family are grieved and filled with sorrow, and for the remainder of his days he goes a disgraced and ruined man in the State which he has loved and served.

Managers upon the other side, I repeat, have made an able and courteous, zealous, courageous and learned prosecution, but I hope, gentlemen of the court, that before I am done I shall be able to show you, not only to your satisfaction but to the conviction of reason itself, that they have failed to bring such a case in the law as will sustain the articles of impeachment, and that it is your bounden duty as a court to sustain the demurrers we have interposed, dismiss these articles of impeachment and turn this man back into his office, to the discharge of the duties that belong to it that have been entrusted to him by the people of Texas, and that are devolved on him by law.

I shall not attempt, gentlemen of the court, to follow the wide field which has been traversed by the managers; that is to say, I do not propose to take up their arguments seriatim, one gentleman or another, but I shall attempt to discuss these questions in such a way that I shall reach and answer and overthrow every proposition and argument which they have brought for your consideration. But before going into the main argument I desire to address myself to one or two preliminary matters that have been put before me, and one was the question presented by a member of the court last evening, and is to this effect: That a landlord, where his tenant violates his contract, has his remedy at law, and a question founded on that proposition that if an officer of the State of Texas breaks his contract with the State of Texas, is there no mode by which he can be ousted from his office and the State made whole in the contract? The answer is yes. The landlord has a remedy against his tenant if the tenant violates his contract, and why? Because the statutes of the State of Texas provide the remedy. But it is asked has the State, the people, no remedy if an officer breaks his contract with the State of Texas and her people? The illustration the member of this court has given is an apt and pertinent one, viz.: Suppose the respondent here had closed the doors of his office and had refused to discharge any of the duties incumbent upon him by law, and thus violated the obligation which he had taken in his installation oath, would there be a remedy? Yes there would be a remedy, full, adequate and effective in this: The officer who would be guilty of the character of action supposed would either be a crazy man or else he would be subject, under the Constitution and laws of

the State of Texas, to the process of mandatory injunction, and he would be compelled to discharge his duties according to law; or not complying with the mandatory injunction he would be placed in jail for contempt of court, and the chief clerk, under the law, discharge the duties of the office.

Again, take the case supposed by a manager, viz., that his excellency in the executive office just below us should take it into his head to pardon all of the criminals that might be convicted in the State of Texas, and do so. Or take the other case supposed by another manager, viz., that the same officer should summon all of the militia of the State to assemble at Austin and march them around and about this town, and the question asked, what if the Governor should be guilty of such an act, could he not be impeached? No, gentlemen, he could not, because he would be a crazy man, the ward of his God, and articles of impeachment could not reach him; but he would be quietly and orderly placed in the lunatic asylum and the Lieutenant-Governor inducted into office to discharge the duties of the high place. These instances are far removed from the case before you and afford no light or instruction to guide you, and are but artless confessions on the part of my friends, the managers, of their weakness on the law of the case the House has brought and they champion. Extreme instances do not establish principle, nor are they aidful in the construction of the laws and the Constitution to make them broader, more comprehensive or efficient. We must take the case presented and deal with it in the light of law, right and reason, as that light is thrown out by the words, the meaning and spirit of the Constitution.

One more point, and I will address myself to the main question in this case. It is this: The question has been put by members of the Court to my friends on the other side, whether an officer, after his re-election, can be impeached for offenses committed by him anterior to such re-election? This question they have not answered, and indeed have made no real effort to do so. I will take this burden, and from the standpoint of precedent, principle and authority lay before you good reasons why the question must have a negative answer, and that the special demurrers pointing to the offenses antedating re-election must be sustained.

I will try and answer that question, gentlemen of the Court, to your satisfaction, and I read but a sentence, if the Court please, from those great names who framed the Constitution of the United States; those men whose reputation and renown will last and flash out on the page of history as long as civilization itself will last. In 1789, when the very provision of the Constitution of the United States relating to impeachments was under consideration, Mr. Madison, Mr. Gouverneur Morris and Mr. Randolph, and all of those great statesmen being present, this question came up—whether or not the President of the United States would be impeachable in a subsequent term for derelictions of duty committed or omitted during his prior term, and here is the answer by Mr. Gouverneur Morris: "He (the President) can do no criminal act for which he may be punished (in the ordinary mode). In case he should be re-elected, that will be sufficient proof of his innocence." (Elliott's Debates, 340.) Thus, in 1789, in the grandest body of men that ever convened or sat in counsel, this question was first mooted, and then and there forever settled; not to be raised again save in times of peril, passion and dangerous party rancor.

At a later day, in a case in New Jersey, the question is decided in just so many words. The case was this: A member of the city council having been elected, yet, giving away his reason and his conscience, he was moved to action by considerations of money put into his hands in the shape of bribes by persons who desired to have a franchise passed through the city council. He received the bribes. He was moved against because of the crime. The city council appointed a committee to investigate, and they reported that he was guilty as charged, and by proper motion the full council expelled him and ejected the man from his position as a member of the council: He went back home, was re-elected, and came back into the council for the purpose of taking his seat and participating in the management of city affairs. The council refused so recognize him on the ground that he was unworthy to sit among honest men and to participate in the management of public affairs. They ejected him the second time by non-recognition. He applied to the Supreme Court of the State of New Jersey. The higher court decided, that

although the man received bribes, was unworthy to sit among honest men, yet the law was that his re-election was a condonation of the offenses perpetrated by him prior to the date of his second election. That case is reported in the 25th New Jersey Law Reports, on page 306.

Why should we go further, gentlemen of the court, than to our own Supreme Court? We will take the case of the State of Texas v. J. M. Brackenridge, county judge of the county court of Travis county, Texas, and that case was this (it is necessary that I give you the salient points in each case that you may understand and appreciate the character of the ruling and meaning of the decision of the court). J. M. Brackenridge was charged with extortion in office. He was charged with receiving illegal fees. Fees that were not allowed by law. He was charged with not only having demanded, but having received public money as fees for office when he was not entitled to them. It fell to my lot to make the defense of J. M. Brackenridge. These things I will explain further, happened between his re-election and his induction into the office for his second term. I founded the defense of Brackenridge upon the ground that the interim between election and his second induction into office by taking the official oath was a continuation of his old term. And that in law and under the Constitution, when the day of election came that he held over until he was inducted into office by taking the official oath. The courts did not agree with me in that, but said that the offenses happening between the election and his second induction into office, that the offenses belonged to the new term of office and, therefore, that he was liable to indictment and removal from office for the perpetration of these offenses. But in the decision of that case, and you will find the case in the 27th Court of Appeals report, page 530, wherein the decision, it is stated: "It is insisted by counsel for the defendant that the judgment, removing from office, is unauthorized because the acts were committed before he had qualified as county judge, as his own successor in that office. It is provided by statute that all convictions by petit jury of county officers shall work an immediate removal from office of the officer so convicted, and such judgment of conviction shall in every instance embody an order removing such officer. It is expressly declared, however, that no officer shall be removed from office for any act he may have committed prior to his election to office. Art. 3415, Revised Statutes. There can be no question in view of the last quoted provision of the statute and of the law as settled by the decisions of the courts, that if the acts of which the defendant was convicted, had been committed prior to his election (or re-election) to office, such acts would afford no legal grounds for removal. His election would be a condonation of any crime or misconduct committed prior thereto." Does not that answer the question that has been sent up? Under the decisions of the Supreme Courts of the State of Texas, under and by virtue of the force and effect of the statutes of Texas, the re-election of an officer, constituting him his own successor, would be a condonation of any crime, or misconduct, committed prior thereto, at a time when he was not holding the office to which he had been elected. This opinion refers to the case of Gordon v. the State, 43 Texas, in which Gordon was sheriff of Guadalupe county, and was removed from his office under charges by the district court for offenses charged to have been committed by him prior to his re-election. The Supreme Court of Texas in that case (Gordon's) says that an officer re-elected, cannot be removed under the laws of the State of Texas, for offenses committed by him during his prior term of office.

In the case of Trigg v. the State of Texas (49 Tex., 643), Judge Roberts, delivering the opinion of the Court, makes this remark: "In the charges made against Trigg, who was district attorney of the judicial district composed of Travis county, there are some which appear from their dates to have been committed by him prior to his re-election to office, and if that fact had been called to the attention of the court they would necessarily, and as a matter of course, have been stricken out."

The next case referred to in this connection is in 56 Texas, Flatson v. State, p. 93, in a decision rendered by the Supreme Court through the mouth of Judge Stayton in which he refers to the cases of Trigg and Gordon and affirms the principle laid down in those cases. Now, then, gentlemen of the court, we have the expression from the makers of the Constitution of the United States that the re-election of an officer is a condonation of his

offense, because the re-election is a vindication by the people who re-elect him. It is a condonation in law for all the wrongs he has committed up to the time of his re-election. You have the direct, express words of the statutes of Texas under which we live, that no officer shall be removed from his office for acts committed by him prior to his election. You have the words of the Court of Appeals, who have the liberty of all men of Texas in their hands. You have the decisions of the Supreme Court, the highest tribunal upon civil matters known to Texas, and they affirm the same principle, and we stand here invoking the law as it is written and the law as it has been declared by the courts of last resort in this State to sustain, as they do sustain, uphold and support us in our answer to the questions propounded. These authorities are unanswerable, and we rest on them.

Gentlemen of the court, the special demurrers, so abundantly upheld by the authorities cited, interposed by respondent to the offenses charged antedating his re-election, have been designated by one of the managers on the part of the House as the statutes of limitations. They are plead, if the court please, for no such purpose. We plead the law, as it was our bounden duty to do under the law and in justice to this court. If the law be as we have shown it to be by the statutes and decisions, would we not have been perpetrating a wrong, absolute, unqualified and unjustified on this court, if we had held silent and permitted this court to go on and investigate these legally dead matters, taking up the public time to learn supposed facts for which, if they existed, you cannot remove this respondent from his office? We did it in the interest of the public, of the law and in the interest of good practice in this High Court and in any other court where the laws of the United States and of this State may be administered.

I think that when you have considered the propositions which I have made upon the offenses that are alleged anterior in date to the re-election of this respondent, that you should and will sustain the special demurrers which we have interposed, on the ground which I have been discussing, and if you do that, then the field or scope of investigation, even if you should not sustain the general demurrers, will be greatly lessened, and your duties will have been fully accomplished, by investigating the matters which have been alleged against respondent that have, in dates at least, legal life in them.

Now, gentlemen of the Court, I propose to address myself to the general demurrers, and I do so with the expectation and with the belief that I shall reach and convince the mind of every member of this Court that these articles of impeachment, in their substance, and as presented, are not grounds for impeachment, and that under no investigation, under no proofs that can be adduced or brought in on the articles, can this man be removed from his office. You will remember, gentlemen, that we confess, by our demurrers, the truth of every allegation which has been made against respondent in the articles. If the truth of the articles were proved by the voices of a thousand witnesses they would be no more proven than they are now, in law, by the interposition of the demurrers. We take the facts as alleged, and state that they are true in their facts, but being true, they are not sufficient for the House of Representatives to have the relief prayed for; that is, the removal of the respondent from office, and his deprivation of right to hold office in this State in the future.

I want to present these questions in the following mode, and I beg you to follow me as I state the propositions:

My first proposition is that this is a *criminal proceeding*; that this High Court of Impeachment, constituted as it is constituted, is a *criminal court*.

My second proposition is: If this be a criminal court then the Constitution of Texas, sections 1 and 2, article 15, is not self-executing and does not authorize the House of Representatives to prefer articles of impeachment before this high criminal court for any offenses under the laws of the State of Texas.

My third proposition is: If the Constitution executes itself then, under the Constitution and laws of the State of Texas, no offenses can be inquired into by this high court save offenses that in and of themselves are infractions of the penal laws of Texas.

Fourth proposition: If you shall decide that this is not a criminal court,

that the Constitution executes itself, and that you can inquire into other matters or crimes or misdemeanors that are not laid down in the statutes and the written law of the State of Texas, then that this court dominates all the departments of government, and all State officials hold their positions at the will and pleasure of this body.

If you are not limited in your jurisdiction by the Constitution and the laws of Texas, as written and judicially declared, then where are the bounds of the territory over which you will wander and reach out for offenses against the citizens of Texas authorizing you to deprive them of their offices by this high proceeding? Where will you go? Will you go to the common law of England? Will you go to the parliamentary law of England? Will you go to the Constitution of the United States? Where is the limitation of the inquiry, if you break the bounds of the Constitution and written law of Texas? What are the bounds or limitation that will confine you in your investigation?

And when the court has gotten through with the respondent in this investigation, and you shall have decided against him in your minds and judgments, that this is not a criminal court, that the Constitution executes itself, that you are not confined to the written law of the State of Texas in prosecuting her citizens, that you can go outside of Texas and reach back over the old common law, and that you can in this court, and in the Nineteenth century, in the State of Texas, prosecute a citizen of Texas for crimes that are known only to the common law or parliamentary law of England, then, gentlemen of the court, I will come down to the position occupied by the gentlemen managers in this case, and I will stand with them there, and when you have overruled us in every proposition we have made, we will stand and face them upon their own ground and show you that, admitting the truth of what they have to say, still they have no impeachable matter against this man.

I take it, gentlemen, that this is a court. I take it that under the Constitution and laws of the State of Texas that this is a court, and that as a court it will be bound to keep itself within the rules of law. If this be not a court, and if it be a court and you are not going to confine yourselves, in the consideration of these matters, to the known law of the land, then the respondent has no use for counsel here. Counsel can only be valuable or beneficial when he has the law to speak to—a limitation beyond which the court can not go. What we will say to you will be within the Constitution and laws of the State of Texas, and we will attempt to enforce our views from that standpoint.

Gentlemen managers say this is not a criminal proceeding. What authority have they for that expression? What authority have they brought here to teach you members of this court, and convince your minds that it is not a criminal proceeding, and to that extent a criminal court?

My proposition is that this is a criminal court, and being a criminal court, that it can administer no criminal laws upon a citizen of Texas, save and except the crimes that are laid down by the statutes of the State of Texas under the Constitution of the State of Texas. I read from Jefferson's Manual, a book that governs you here to-day. Let us see what he says about this character of court. Under the head of "Impeachment," on page 272: "The court of impeachment is for the trial of crimes." For the trial of crimes. Where, gentlemen of the court, was ever a crime tried by a civil court?

Before I forget it, gentlemen on the other side have referred to the case of Belknap, Secretary of War, as partly pointing to the right to impeach after the party was out of office.

Let me explain that matter to you a moment. Belknap was Secretary of War. He committed his crimes, and they were crimes.

The House of Representatives impeached him by preferring articles, embracing crimes, against him. Pending impeachment he resigned from under the articles of impeachment and the Senate of the United States decided that the resignation of an officer deprived them of jurisdiction, and the impeachment fell. But suppose that they had adhered to the articles of impeachment in the Belknap case—that is not a parallel case to this, for the reason that after the commission of the crimes on the part of Belknap, he

was not re-elected to office, and his crimes and offenses had not been condoned by the great body of electors.

The case of Belknap has no place in this discussion. It illustrates nothing. It is authority for nothing, and can not militate against the authorities which I have read in your hearing.

But I proceed on the point I was discussing when I was requested a moment ago to suspend.

I read further from the manual of Jefferson, on page 274, "The accusation," that is the articles of impeachment, "the accusation or articles of the Commons is substituted in place of" what? "of an indictment." The articles of impeachment are substituted in the High Court of Impeachment for an indictment. That would be applicable to make the criminal charge in the event the offender had to be tried in the King's Bench; and articles of impeachment in the United States, or the State of Texas, are substituted in place of an indictment, which would describe crime and arraign the offender or party charged were he to be tried in the District Court just down the street, or in any District Court in the State of Texas.

I would not, gentlemen of the court, have you lose sight for a moment of the theory on the part of the managers in this case.

Their theory is that the word "impeachment" is a word of technical meaning, coming down from the British government; that when the word "impeachment" is uttered in the Constitution of the State of Texas, that it has gathered around it and is supported by all of the meanings, usages, customs and practices which cling around an "impeachment" in England; therefore it is, that they say that when the word impeachment is used, it draws to it a meaning that was attached to the word "impeachment" in England—and therefore, that any crime, offense, misdemeanor, official misdemeanor, malversation, or maladministration in office hurtful to any portion or part of the government, that would have been impeachable in England, would be impeachable in Texas.

Well, who would know better, gentlemen of the court, than Sir William Blackstone, as to what the character of the court was as instituted, in which prosecutions were had in England?

Let's see what he has to say about it, page 259: "An impeachment before the Lords by the Commons of Great Britain in Parliament, * * being a presentment to the most high and Supreme Court of *criminal jurisdiction*, by the most solemn grand inquest of the kingdom."

Blackstone, writing down the common law, the parliamentary law, the customs, the practices, and the constitution of courts of impeachment, describes it to you in language that no man need misunderstand. He calls it the highest Supreme Criminal Court.

Well, what does the Britannica Encyclopædia say upon the subject?

"Impeachment," (Encyclopædia Britannica, volume 12, p. 755), "a questionable and now rare form of procedure against *criminals* in England, in which the House of Commons were the prosecutors and the House of Lords the judges."

What is the definition of Black, the lexicographer? We can only get at these matters, gentlemen of the court, by going through the books that deal with the subject matter. "Impeachment, a criminal proceeding against a public officer"—a *criminal proceeding against a public officer*.

What does Raphaelje's law dictionary describe it to be?

"Impeachment, a complaint or accusation in writing against an officer for a great public offense."

We might go on and on, definition after definition, and it is my judgment that you will find no respectable authority, either in England or America, that will denominate this court other than a court for the hearing of crime.

Cushing's Manual, sec. 2569, p. 989: "On the date of trial the proceedings are conducted substantially as they are upon common judicial trials as to admission and rejection of testimony, the examination and cross-examination of witnesses, the rules of evidence, and the legal doctrines as to crimes and misdemeanors."

Turn wherever you may you will find authorities pointing uniformly and without variation that impeachment is a criminal proceeding, and that this is the highest criminal court known to the laws of the State of Texas.

But why need we go out of own Constitution for authority to give proper information as to what is the character of this court?

Section 10, article 1, it seems to me to settle the matter to the mind of any lawyer, any judge, or any court. The heading of section 10, article 1 is, "Guarantees in *criminal* prosecutions." "In all criminal prosecutions the accused shall have a speedy, public trial by an impartial jury. He shall have the right to demand the nature and cause of the accusations against him, and to have a copy thereof. He shall not be compelled to give evidence against himself. He shall have the right of being heard by himself or counsel, or both; shall be confronted with the witnesses against him, and he shall have compulsory process for obtaining witnesses in his favor. And no person shall be held to answer for a *criminal offense* unless on indictment of a grand jury, except in cases in which the punishment is by fine or imprisonment otherwise than in the penitentiary, in cases of impeachment, and in cases arising in the army or navy, or in the militia when in actual service in time of war or public danger."

Let me read it again: "And no person shall be held to answer for a *criminal offense*, except in cases of impeachment, etc.; save on indictment, etc., and the House of Representatives may present articles of impeachment." Put the two together—read them side by side. What do these two articles of the Constitution mean? Can they mean, dare any man say that they mean, other than simply, that the House of Representatives may prefer articles of impeachment against officers of the government for crimes committed against the statutory laws of the State?

Now, it is not needful that I should read other authorities upon this subject.

But I will recapitulate just a moment, to let us see what this preceding is: First. He is charged with offense; he is prosecuted; his conviction is sought, and if conviction shall be obtained, he shall be subjected, first, to the forfeiture of his property, because there can no longer be a doubt upon the question that office is property.

His conviction is sought, and if convicted, the first punishment is to deprive him, by forfeiture, of his property, valuable property, which it is an honor to own.

Secondly. He is to be denounced, and his franchises and rights as a citizen are to be taken from him.

Why, gentlemen of the Court, what more could you do to a man who had imbued his hands in his fellow's blood than to forfeit his property and take away from him the franchises of a citizen?

One of the highest privileges that is known to an American citizen is to respond back with his services to the call of his countrymen to fill and occupy and discharge the duties of honorable positions in the government; and the result of this conviction is that he shall be deprived of the right of ever filling an office of profit or trust in the State of Texas as long as he may live; and there is no reviewing power on this earth that can revoke or reverse the judgment that you may render upon conviction.

The murderer may take the life of his fellow. His excellency the Governor, below here, can save him from the prison. His excellency can save his life by the exercise of the pardoning power. The courts of the country can not review your action. The Governor of your State, who has the power to pardon in all cases except treason and impeachment, is powerless to relieve or to lessen the hardships and forfeitures and deprivations that a conviction in this case may bring upon this man. And tell me!! That a proceeding which results, or sounds, in such serious consequences is not a criminal proceeding?

Gentlemen of the court, it would argue that I doubted your intelligence if I were to press this point longer, because the uniform voice of authority, the uniform practice is, the uniform custom is to treat these courts of impeachment as criminal courts to accomplish punishment on the one hand and forfeiture of rights of property on the other; and a proceeding of that character can not be other than criminal in character, criminal in substance, criminal in proceeding and criminal in process and result.

I leave this point and will not recur to it again unless some member of the court sees proper to transmit to me a question; and I will say now, gentlemen of the court, that I will attempt to discuss the several points that I may

make fully from an authoritative standpoint, and I invite from any member of the court a question upon any proposition or any question, and upon any view of any proposition that I am submitting to this court. If I can not answer it, gentlemen of the court, it will be because I have not the ability to do it, and I will be candid with you and tell you so; but if I can answer it I will answer it, and I will answer it truthfully, as a man and as a lawyer and as a citizen of Texas who desires the upholding of our laws, whether it be against this man or any man who may tread her soil.

I am not here so much in the character of an advocate. I am here, gentlemen of the court, to aid and help you to the extent of my ability to find the truth and the law in this matter, in order to help and aid and assist you in coming to a proper, and lawful, and rightful, and constitutional conclusion in this investigation.

Now, I pass to the second point.

If this is a criminal court, does the Constitution of the State of Texas execute itself? In other words, to put it plainer, does the Constitution of Texas, article 15, clauses 1 and 2, or the entire article, so far as it relates to impeachment, does it execute itself? that is, does it tell you, the court that is operating under that article of the Constitution, of that offense you can take cognizance and try a citizen of Texas, (any officer named) if preferred by the House of Representatives? That is what we mean by the Constitution executing itself.

It is true that the article institutes a High Court of Impeachment out of the Senate upon proper occasion. Now, having instituted the court, you are here. What can you try? Where do you get authority to try anything? You are a constitutional court; what is your jurisdiction? What offense, what crimes, what felonies? And where do you get the authority?

You have no authority, gentlemen of the court, unless, under our theory, you get it from the Constitution of the State of Texas or from some statutory enactment that is aidful to you in discharging your duties as a High Court of Impeachment.

Let us look at that article for a little while, and I will then discuss it to some extent. But it seems to me that they have not discussed it with that degree of candor and openness that they ought to in dealing with a court of this great intelligence.

Let us read it and let us look at it a little while. I want to give you my ideas about it, because, while I contend from the face of the Constitution, it, the Constitution itself, that there is no power given in it to this court to try any offense known or unknown to the laws of Texas. And why? Because the Constitution itself, which constitutes the court, does not provide of itself the matters of which you shall take cognizance, or what offenses you shall try, great or small.

It is a constitutional court and it must have a constitutional jurisdiction. The court is established, but it has no jurisdiction given it, or given you, of any character or over any subject matters of a criminal or civil nature; nor has the Legislature come to the relief of the Constitution and enacted laws to put the Constitution on the subject of impeachment into operative effect.

Well, gentlemen say, if that be the case, what shall the State and the people of Texas do when they have recreant, corrupt, unworthy officers who deserve degradation and punishment.

Gentlemen of the court, men made this Constitution, and nothing yet that ever came from the hand of man is perfect. Yes, it was made by wise men, honorable men, patriots and statesmen; yet how many constitutional amendments are this day before the two legislative bodies at this present session, and that too after Legislature and Legislature have submitted amendments and amendments, and additions and additions to the instrument after it was compiled and passed on by the people.

Is it possible that because men who make instruments of this character, and by oversight or omission, no matter from what cause, have failed to make it perfect; therefore, imperfect as it is, you will reach out with your power—supposed power—and take cognizance of matters and things, and crimes and offenses, and acts of commission and omission that have not been specified in the instrument with which you have, under its terms, no authority and power to deal.

Let us see. The power of impeachment shall be vested in the House of Representatives.

That is right. Those are the words and all the words. But while the power is vested in the House of Representatives, for what is that House going to impeach?

Look at it a moment. "Impeachment!" What is impeachment? It is to *stop, arrest; impeach—stop!* That is what impeachment is. Impeach the corrupt officer who has committed crimes. Stop him before he goes too far. That is to *impeach*.

But does the Constitution say when it has vested the power in the House of Representatives to stop the unworthy officer, the criminal officer? Does it tell why? for what? under what circumstances? under what surroundings?

The House shall say to the officer, "Stop!" But for what,—why stop? There the Constitution is silent.

Then you are compelled, gentlemen of the Court, if there is nothing in this Constitution making it self-executing—no crimes, offenses, no dereliction mentioned—you are compelled to reach outside the Constitution of your State and outside your criminal codes in order to find grounds for impeachment; grounds for jurisdictional matter in the highest court known to the State of Texas or to the Constitution of the State.

The Senate shall try. Yes, you shall try; but you shall try *what?* Articles preferred by the House? What crimes or offenses can the House prefer in the articles? The Constitution does not say, nor do the criminal codes of your State say.

You will try the articles brought in from the House, and yet the Constitution has not told the House what they shall allege against an officer to arrest him from a further discharge of his duties.

You are here, but without power, if we are to take the Constitution itself, and the judicial history and the statutory history of the State of Texas.

When the Senate is sitting as a Court of Impeachment, you shall take an oath. You are constituted all right; you are a court. Here you stand in a constitutional manner waiting for matter to be tried, that you may investigate, and hear and judge and punish.

Further on the Constitution says, "Judgment in cases of impeachment shall extend only to removal from office and disqualification from holding any office of honor, trust or profit in this State. The party convicted on impeachment shall also be subject to indictment, trial and punishment according to law." What does that mean? Are these words idle, superfluous and out of place? No, no, sirs, they are pregnant with affirmative meaning and warning, instructive powers, and to be read here with awe if not with fear and trembling.

The President—I dislike to interrupt you, but there are some questions the members of the court desire to propound to you.

(Here questions are propounded by Senators Greer and Imboden through the President.)

Maj. Walton: I will pay attention to each one of these inquiries. I want the court to remember that I have not all the time in the world, and when switched off on these questions, I am perfectly willing to answer; still, you must give me more time to discuss the main matters, if I need it.

Maj. Walton: Proceeding on the line I was discussing. Judgment in case of impeachment shall extend only to removal from office and disqualification from holding any office of honor, trust or profit under the Constitution and laws of this State. A party convicted of impeachment shall also be subject to indictment, trial and punishment according to law.

Now, in reading you Constitution, gentlemen of the court, there is nothing sacred, nothing mysterious; there is nothing metaphysical in reading the words of a Constitution any more than there is in reading statutory law, reading an essay, or reading history, reading any production of any citizen of this State, unless there be technical words used which need construction with reference to other authorities than the language itself.

This Constitution was made by the people of Texas. It was made for the people of Texas. It was made that the people of Texas who read and write should understand it.

Now, we will take this provision of the Constitution, section 4. We will

take it to an unprofessional man, not a legislator, not a lawyer, not a judge. We will take it to a man in the country; we will take it to a merchant; we will take it to any man who is not hunting for some strained meaning to it for the purpose of carrying a point, and what would be understood by this?

Read it! Understand it! A party convicted on impeachment shall *also*—what a word that “also” is in that connection. A party “convicted on impeachment” shall, what? May be so? If it be a felony, or if it be a crime; if he is impeached for some act that is indictable by the law or punishable under your law, he shall be tried for what? No, that is not it. Here is the language: “If he shall be impeached, he shall *also*” for the same offense for which he has been impeached be triable under indictment and subject to punishment in any ordinary court of the country. I again ask, what does that mean? What do you gather from it?

You are as able and as anxious as I am to read aright the Constitution of your State, where there are no technical phrases or words to construe. What do you gather from that? Does it not mean, gentlemen of the court, as clearly as the English language can expose, express or manifest the meaning of a phrase, that the party who is impeached for matters which are indictable and punishable under the written laws of the State of Texas?

Why were these words put there? Have they any meaning? You know that it is the rule, gentlemen of the Court, that there is said to be no surplusage, no meaningless words in the Constitution; that they all have an office and a function to fulfill, and that they are in the Constitution for a purpose; to mean something to the great body of the people of the country for whom the Constitution is framed and by whom it was adopted.

Why should these words be put there?

“A party convicted on impeachment, shall *also* be subject to indictment, trial and punishment according to law.”

Why, sirs, it is a mooted question to-day, and has been a mooted question since the doctrine of impeachment was first inaugurated in the Thirteenth century in England, as to whether a party convicted on a trial in impeachment proceedings could not plead *autrefois convict* in bar of an indictment for the same matters for which he had been impeached and convicted.

Then what does this language mean here?

It means, by inference, that if a party be impeached for any crime against the laws of the State of Texas, that the conviction on impeachment for such crimes shall not be a bar to punishment in the ordinary courts of the country.

Can it have any other meaning?

It has a meaning, and it is put there for a purpose; and if it means anything, gentlemen of the court, it means that an impeachable crime is an indictable crime; and in the second place that if a party shall be indicted for a crime after he has been impeached he shall not plead impeachment conviction to bar him from punishment under the ordinary proceedings and rules of the law.

But we pass on. We come to another clause. You notice in the second section judges of the District and Supreme Courts and Courts of Appeals are subject to impeachment. Now these officers are also subject to removal by a proceeding before the Supreme Court. But I care nothing about that, it being immaterial in this connection.

I call your attention to the eighth article—to the address remedy, and the officers who are mentioned in said article in part are the same officers that are mentioned in the second article under the head of impeachment.

Now look at this language. I am asking you to read your Constitution like you would read anything else. There is no technical word here; there are no words here we have to go to a dictionary to learn the meaning of, or to a glossary to find out their use. You have to go to no law book or anything of the sort, but read it like you would read a letter from a friend. Let us see what it says:

“The judges of the Supreme Court, the Court of Appeals, the district courts shall be removed by the Governor on the address of two-thirds of each House of the Legislature for *willful neglect of duty, incompetency, habitual drunkenness, oppression in office, or other reasonable cause which shall be not sufficient grounds for impeachment.*” What does that mean?

Is there a member of the court here who can for a moment hesitate to ex-

press what he understands by that? These judges are subject to impeachment under the second article under the head of impeachment. The same officers then under the 8th article are subject to be addressed out of office, for what? for "causes which are not sufficient grounds for impeachment."

Well, let us see what these causes are. What are they? "*The neglect of duty, incompetency, habitual drunkenness, oppression in office, or other reasonable cause.*"

Suppose that we had one of our district judges here on impeachment trial, and you had alleged against him incompetency, habitual drunkenness, oppression in office, neglect of duty, or any other cognate thing along that plane that does not amount to a prohibited crime or offense under the statute laws of the State of Texas, and his counsel had interposed a general demurrer on the ground that no impeachable matter had been alleged in the articles, would you impeach him anyhow, notwithstanding article 8 says that neglect of duty, incompetency, habitual drunkenness, oppression in office are not sufficient cause on which to found articles of impeachment? If language can be understood, if there is not a single thing, an intermixture of words and phrases meaning nothing and incomprehensible to any intelligence, then that is what the article means—that you can not impeach a judge of the Supreme or District Court for the offenses, misdemeanors, improprieties and wrong doings, which are mentioned in this article.

Then what is the inference—the necessary inference from the use of these words—and the argument flows as naturally to its conclusion as water runs downhill, that for impeachment there must be a graver offense than neglect of duty, oppression in office, habitual drunkenness or incompetency. The argument is here; there is no mode or manner of logic to get away from it. It is here the reason flows out as naturally as the fruit comes from the bud, or as I said before, this old statesman and tribune of the people (pointing to the Hon. John H. Reagan, who sat near,) among others as Constitution makers framed the organic instrument and placed it before the people of Texas for adoption with words, phrases, sections and articles in it that are meaningless, that have in them no force or vitality, either in law, in logic or common sense. So I conclude that if you will take the Constitution itself, you will find that it does not execute itself, in that it does not mention the matter offense or crime, or wrong doing, for which a party shall be, or may be, subjected to impeachment.

Well, we will postpone the fifteenth article a moment.

There are articles of our Constitution, gentlemen of the court, that are not self-executing, and why should this one be reserved and exempted from falling down into defectiveness, while others are admitted and decided by the highest courts of the State to be defective and non-executing.

We will take the section of the Constitution, gentlemen, entitled "School fund"—section 2, article 7—one, perhaps, of the most important sections in the Constitution outside of the Bill of Rights. Hear me read it: "*School fund.* That constitutes "all funds, lands, and other property heretofore set apart and appropriated for the support of the public schools; all the alternate sections of land reserved by the State out of grants heretofore made, or that may hereafter be made to railroads or other corporations, of any nature whatsoever, one-half of the public domain of the State." Is this last clause self-executing?

Take the situation in 1876, when the Constitution was framed. There then remained in Texas of unappropriated public domain over seventy-one million acres, and the convention of 1876, desiring and intending to support the common school system of the State of Texas by the most munificent school fund that ever existed in the civilized world, undertook to set aside, by the words used one-half of the public domain of the State at that date; or, in other words, thirty-five million acres of land. The question came up as to whether or not that clause of the named article of the Constitution was self-executing. It was elaborately argued, involving, as it did, thirty-five millions of acres of land; your present Governor, as Attorney-General, supporting the proposition that it was self-executive, the railroad corporations supporting the proposition that it was not self-executing. Litigation was instituted, prosecuted, judgment arrived at, and an appeal taken from the lower courts until, upon the hill here, the question of questions to the school fund came before the court of last resort in the State of Texas. What

was the decision? It was that the expression in the Constitution "one-half of the public domain of the State" was not self-executing. Thereby the school fund lost millions of acres of land. Millions of acres of land, by the decision of the court, were lost to the school fund, and found ownership in railroad and other corporations. Yet will you say that the members of the Constitutional Convention were ignorant, made an oversight, or were perfect, and met every condition and contingency that might happen?

No, gentlemen of the court, they but exercised their judgment as honest patriotic men, ever loving their country, many of them having on a hundred fields of battle bared their breasts in support of Southern liberty; who were born upon the soil of Texas, loved her as they loved their mother. They were doing their best; they were seeking to foster your public schools, and yet they were unable to frame or did not frame, were unable to complete and perfect or did not complete and perfect a provision of the Constitution that executed itself, and that, too, as I stated before, upon one of the most important points outside of the Bill of Rights, in the Constitution of the State of Texas. Not self-executing! Well, there is one place where the constitutional convention in a matter of infinitely more importance than impeachment, failed because of lack of words, the lack of adequate word machinery, to give jurisdiction to some one to make a division of the public domain, some one take cognizance of the matter, to deal with it from a constitutional standpoint. There is one instance in which the Constitution is defective in that it is not self-executing. The Supreme Court in 77th Texas decides that; and in deciding it they use this expression—it is an expression, my friends, gentlemen of the court, that should at all times have the most deliberate consideration of this court, of all courts, of all readers of the Constitution, and of all persons whose duty calls them to pass upon the great charter of our rights.

The court expressly—Judge Henry delivering the opinion—holds that that provision of the Constitution is not self-executing. And what do they say in that immediate connection: "*The narrow rule of arriving at the meaning of an instrument by reference alone to any one clause, when it includes others relating to the same subject, can not be allowed in construing any written instrument, much less the Constitution.*" They hold, then, that that provision of the Constitution is not self-executing, and they hold further, that that provision of the Constitution must not be read alone. It must be read in connection, in juxtaposition as it were, with all other provisions, clauses and articles on the subject matter.

And so we see that the impeachment article must be read in connection with your Bill of Rights; it must be read in connection with the protection of human liberty; it must be read in connection with the protection of property, in connection with the protection of and preservation of rights. You cannot take an isolated phrase of the Constitution and adhere to it by itself and alone unless it absolutely exhausts the subject matter. It is not possible. I conceive it not to be possible that this court, or that any court, will ignore relative and pertinent provisions of the Constitution that afford floods of light by which to read article 15; that extraneous help will be sought outside of Texas, outside of the United States, and far back into the parliamentary law of England, in the dark ages of 1300 and 1400, blundering on down to 1700; because I say to you, gentlemen of the court, that I shall be able to establish by authority that will not be disputed, unless the denial comes from willful ignorance, that from 1600 to 1805, England's last impeachment, there has never been an impeachment in the government of Great Britain that was not founded on indictable offenses. So we must not read this article alone, but we must take the whole Constitution, construe it as one instrument, and give it force and effect as such.

Well, that is not the only article of the Constitution that is not self-executing.

Our Chief Justice Roberts, in delivering the opinion in the case of Trigg, 49 Sup. Ct., says this, running the parallel with my friends upon the other side, who say that because the Constitutions of 1845, 1861, 1866 and 1869 all have this impeachment article just as it is in the Constitution of 1876; therefore, that we condemn and arraign the makers of these Constitutions as "ignoramuses,"—to use the expression of the manager himself—because the

one has followed the other, and has made no variation in it to make the assertion is to beg the question and gain no strength and make no fame.

Now, we will take up section 9, article 5, of the Constitution, which has had as long a run and been repeated as often as article XV:

Gov. Roberts, as Chief Justice of your State, says, "that that article has been in every Constitution of Texas *seemingly* without object or purpose, and that it has never executed itself." Judge Roberts is not a man who is denouncing the parties who have retained these articles the Constitutions, nor are we; we have no right to make any such denunciation. We stand here with the authority of the Supreme Court in our hands, and their utterances we give to you, and not assertions from our own mouths. Let us see what he says. And we may, I think, with reason and with safety, take what the chief justice says with reference to these subjects: "The clause providing for the removal of the district clerk by information on indictment seems to have been copied into all of the Constitutions (except in that of 1869) from the Constitution of the Republic of Texas, without any specific object, and without specifying the grounds of removal." (Trigg v. State, 49 Tex., 668.)

How? The Constitution of the State of Texas says that the district clerk shall be removed by conviction by indictment—*by indictment!* I want to dwell on it in order that the momentous question which is here shall impress itself upon your minds, so that under no circumstances or surroundings will any member of the court forget the lesson that is taught here. "Removal by indictment"—indictment for what? Nothing specified. Impeachment for what? Nothing specified.

"Indictment," gentlemen of the court, comes down from the common law, just as the word "impeachment" came down.

Indictment under the common law could be for murder, for treason, for felonies of all grades, for misdemeanors of every class.

Then when the Constitutions of 1876, of 1866, 1861 and 1845 said that the clerk might be removed by indictment, why is it that the courts of the country did not have the power to move against the clerk for any indictable matter that could have been embraced in any indictment under the common law of England? Would there not have been just as much reason, indeed, more reason and logic in it, because indictment was the ordinary mode by which offenses were brought to trial and through which punishment was meted out to the guilty offender, while the process of impeachment was of extraordinary remedy, seldom resorted to, and only in times of danger, and as against great offenders, whose influence in the country forbade that an ordinary jury should find a verdict against them.

Now, what does Judge Roberts say? That this article did not execute itself. "That clause itself was defective in not specifying the grounds of removal"—*in not specifying the grounds of removal.*

Is not the impeachment article likewise defective? Why not? If section 9, article 5 was defective for non-specification of grounds of removal, give me the reason, gentlemen of the court, or gentlemen managers, why sections 1 and 2 of article 15 are not likewise defective? And why? Because it fails to specify the grounds or causes for impeachment. If one dies for want of power, the other necessarily falls dead by its side. Why not? Is it because that one is a State officer and the other a county officer? Shall the great State of Texas hedge around her great State officers less security and protection than she hedges about the county and precinct officers? It is insane to reason that way; it is illogical to come to such a conclusion.

When you draw your conclusions contrary to what is safe and true and judicially reasoned out, then you pass away from every safeguard that procures a proper protection from the Constitution, and you pass away from safety and security, not only to the officers of your country, but to your own security, because you give grounds, means and room to violate the spirit, utterances and integrity of your organic law, and subject the citizen to pains and penalties that have no measure by the written law of the land, and no limitations by the solemn adjudications of the courts.

But we go a step further on this line. And, now, I want you to go with me, members of the court, because I think that when we have comprehended the genius, the system and the history of our law in Texas, that

what I am going to say will satisfy you that the interpretation which I have given to the Constitution is correct.

(Court takes a recess to 3 p. m.)

I will now attempt to the best of my ability, candidly, and as I believe from the standpoint of the law, to answer the several questions that were put by members of the court prior to the adjournment of the morning session.

First, question by Senator Greer: "I understand your answer to my question put to your associate yesterday to be, that if the Commissioner were to shut up his office, and refuse to perform the duties of his office, that the remedy of the State was by writ of mandatory injunction and mandamus, and that if he refused to obey the writs that he could be lodged in jail. Please explain article 3433a, Sayles' Statutes, page 171."

There are three answers to this question, and the first is, that this article only prohibits the issuance of mandatory writs when it is to compel the officer to perform a duty he is authorized by law to perform. In this instance he would be restrained from acting in a manner not authorized by law—viz., the abandonment of his office. If he were to shut up his office, and the court were to intervene to compel him to keep the office open it would not be in violation of this article of the statute. The second answer is, that the jurisdiction conferred upon the courts of the country to issue these summary writs, injunction and mandamus, against the heads of the departments is a jurisdiction conferred by the Constitution of the State; it is a constitutional jurisdiction, and there is no power in the Legislature to restrict or limit the jurisdiction with which the Constitution has clothed the courts of the country. And further, this article of the statute referred to is unconstitutional, null and void, and was so declared in effect by the Court of Civil Appeals in the case of Kaufman County v. W. L. McGaughey, at the present term of the court.

There is yet a better reason than those given, and that is, that the amendment to the Constitution of 1891, was framed and passed and submitted to the people, and adopted, since the passage of the said article, whereby the old constitutional jurisdiction was again bestowed upon the courts, and the universal construction is, that where the Constitution is amended and there are adopted clauses in antagonism with pre-existing legislative acts, the statute goes down, and the Constitution lives. There is yet a better reason than all these, and that is, that the Legislature in 1892, following out the provision of the amendment of 1891 to the Constitution, at the called session passed a law, by which is vested in the Supreme Court of Texas original jurisdiction to issue mandamus and injunctions against the departments of government in this State, saving only the Chief Executive. There is plenary power by original jurisdiction in the Supreme Court to issue the writs which I said would have been effectively remedial, in the supposed case where the Commissioner refused to discharge his duties. And just at this point I will say that this man by law is required to give a bond for \$50,000 for the faithful discharge of the duties of his office, and if he brings hurt or harm to the State of Texas by his acts, or to the people of Texas, there is his bond; and if he fails to discharge his duty as he has sworn to do, there is the Supreme Court, with plenary power by mandamus and injunction, to compel him to do his duty; so under the Constitution and laws of the State of Texas, respondent is in the full grasp of the ordinary remedial agents of the State, and whenever and wherever that is the case, the theory of impeachment fails, because that cumbrous process is not resorted to, only in cases where they are not reached or cannot be reached by the ordinary process of law.

Mr. Imboden, member of the court, submits this question: "Could an executive officer be impeached for promising an office or any valuable thing prior to his election? If not, what redress have the people for such an offense?"

This is our answer: The constitutional oath is, that he (officer) has not fought a duel with deadly weapons within this State, nor out of it, nor has he sent or accepted a challenge to fight a duel with deadly weapons, nor has he acted as second in carrying a challenge, or aided, or advised, or assisted any person thus offending; * * "that I have not, directly nor indirectly, paid,

offered or promised to pay, contributed, nor promised to contribute, any money or valuable thing, or promised any public office or employment as a reward for the giving or withholding a vote at the election at which I was elected." If in fact and in truth he has promised (and I tell you this is a wide reaching question; the character of elections we have in the State of Texas are shameful, and they will so continue until a sentiment grows up that will put down the wrongs that are perpetrated in this line), and takes this oath, that he has given no thing of value in money, or office, or position, or favor to secure or aid in the securing of the office, and it is false, the statutes of the State of Texas are broad enough to have him indicted for false swearing and to send him to the penitentiary where he belongs. That is the answer that the people of the State of Texas have for an officer who falsifies his official oath in the State of Texas. It is a safe and adequate course, if applied and pursued as it should be applied and pursued.

Senator Hutchison submits the following question: "Bills of attainder being prohibited in this country, has not impeachment been considered to embrace classes of offenses not known to the common law and the statutory law?"

To answer that question intelligently I must go back in history. In England there were four modes by which offenders against the law were brought to justice: First, by indictment; second, by impeachment; third, by bill of attainder; fourth, by star chamber. We understand what is meant by impeachment and indictment. What is meant by bill of attainder? That was resorted to only when the House of Commons had presented to the House of Lords articles of impeachment for some imaginary offense, which the Lords would not entertain. In such case the House of Commons passed a legislative act, in which the House of Lords were not supposed to, and did not, participate, and the party whom the House of Commons could not impeach they attainted by a bill of attainder; and when they failed to impeach, the king desiring it when he had enmity toward a subject who had offended him, or supposedly done so, when the articles of impeachment were not preferred, or when the House of Lords would not entertain them, then star chamber was resorted to by the king, he selecting subservient tools from among the lords, or creating new ones to work his vengeful purposes. Thus was the star chamber constituted—created to convict and take away the life of the subject. These were the four modes. There has never, since the organization of the Federal government, been a party or faction who have advocated the introduction into our laws, either legislative or judicial, the process of bill of attainder. Bill of attainder was the instrument by which prejudice wreaked its vengeance upon a subject who had offended the House of Commons. It has not, and could not have, and never will have, place or part in the administration of justice under American institutions.

Question by Senator Dickson: Is not the defendant charged with having filed a false land lease, and, if so, please define the offense.

I would refer the member of the court to the articles of impeachment. He is not charged with filing in the Land Office a false lease. He is charged with making a false memorandum upon a lease that was already in the Land Office. That is the charge in one of the articles of impeachment. Suppose it was a false memorandum, and because of the false memorandum, the State of Texas has lost something. Suppose the State of Texas has lost something, because of the false memorandum. Is that a criminal offense? This man has taken the oath of office, and he has given a bond for \$50,000 that he will perform his duties properly. If the State has come to harm or hurt in the way of money, then there is the bond which responds to it. If the charge were as a member of the court intimates, the offense is not defined in the criminal laws of the State of Texas. The nearest definition that could possibly reach it, would be the broad construction, that has been given to the latitudinous statute itself, with reference to the forgery of land titles, where it is declared if a man execute a false instrument, whereby the title to another's land is clouded, it shall be accounted forgery. That is the definition, nearest of kin that could be given or referred to in response to the question. That is not, however, the charge against respondent.

Question by Senator Swain: If this is a criminal proceeding, why is it that article 15, section 4, of the Constitution, provides that a party con-

victed on impeachment shall also be subject to indictment, and trial and punishment according to law?

The reason is, as I tried to explain this morning. I will remake the explanation. It is this: That the articles of impeachment, under the theory of impeachment, are presented for offenses committed by officers of the government in the discharge of their official duties, and the object and purpose of the Constitution, is by the process of impeachment to reach, remove and disfranchise the offenders, simply to the extent that they embarrassed the affairs of State, and corruptly or feloniously hindered the administration of the government. That was all that was intended to be reached by the process of impeachment. To reach the officer individually, and in an absolutely personal way, whose crimes were not only calculated to embarrass the administration of the government and to bring the State into disgrace, but had invaded private rights in person or property, the law remitted him to the ordinary and usual modes of punishing criminals; besides, the court of impeachment is not possessed of the necessary machinery to punish the person of the offender. It has no jails, penitentiary, prisons, juries, sheriffs, etc. Neither Constitution nor laws give the court of impeachment any authority to imprison a citizen; no authority to take the life of a citizen; no authority to interfere with the personal being of the citizen, but simply to disrobe him of his official power, and by judgment of the high court to forbid him ever to be placed in office again. That is the reason of the statute.

These constitute the questions that were propounded. I have answered them as best I could, believing I have reached the meaning of the law in every particular.

While these questions rained in on me very fast, and take up some of my time, the invitation is still held out, and I am willing and ready, and invite any question that any member of the court may see proper to put to me, because I am here for the purpose of shedding light into the minds of the court, if in my power; and I am here for the purpose of upholding the laws and the Constitution of the State of Texas. I am here to administer and uphold the rights of the individual as the Constitution and laws protect him, and have no purpose of shielding or preventing punishment to any man who deserves it.

I was on the proposition attempting to show that sections 1 and 2 of article 15 of the Constitution were not self-executing, at the hour of adjournment. On that line I would call your attention to the case of Watson, in the 9th Texas Court of Appeals, 212. I most heartily invite your attention to that case, because it teaches a lesson, a lesson that ought not to be forgotten in your consideration of this case. It is this: The Constitution says that certain county officers may be removed by the judges of the District Court for incompetency, *official misconduct*, habitual drunkenness, or other causes defined by law. (Art. 5, sec. 24.) Now mark you, that is the Constitution. The Legislature, in attempting to define what official misconduct was, named certain offenses. In limiting the scope of the Constitution, by naming in the legislative act what was meant by official misconduct, what was the width, depth, breadth and reach of the constitutional words, "official misconduct," we are not called upon here to explain. The Legislature took up the words "official misconduct," and construed what they meant, and then made the provision in your statute for the removal of officers in this State who should be guilty of acts named in the statute. The District Court undertook to remove a citizen from office for a cause that was outside the legislative construction of the meaning of the Constitutional words, and the defense to the case was, first, that the Constitution was inoperative—that it was not self-executing; and secondly, that the Legislature, undertaking to carry that section of the Constitution into effect, had defined what "official misconduct" meant, and the act with which the party was charged did not come within the definition given by the Legislature of that meaning. He was convicted in the lower court, notwithstanding the defenses based on the law, but when it went to the Court of Appeals, it was decided that whatever may have been the scope of the constitutional words "official misconduct," yet, that the Legislature, undertaking to construe those words, limited their meaning to certain acts, and that the party charged had been removed from office for acts and facts which were not embraced in the legislative construction, and that his removal was illegal and void, and

the case was reversed and the cause dismissed. Now, when you consider that case, and the law announced in it, in connection with the article of the Constitution under discussion, you can not, and you will not, fail to appreciate its pertinency and controlling effect. The Constitution said that a man may be removed from office for "official misconduct." There is your constitutional expression and your legislative interpretation of it, and then your citizen is removed from office because he had done something that was not within the legislative definition, and therefore the proceedings against him were void. Is that case, gentlemen of the court, stronger than the case you have under consideration? Here you have impeachment, there they had "official misconduct" interpreted by the Legislature. Here you have nothing, there you had "official misconduct." There you had a construction of the constitutional words by the Legislature, in the case before you, you have only the word "impeachment," without defining what impeachment means or for what offenses a man may be impeached.

I will read only a word from Mr. Cooley on what is an executing provision of a constitution: "A constitutional provision may be said to be self-executing if it supplies a sufficient rule by means of which the right given may be enjoyed and protected, or the duty imposed may be enforced." (Cooley's Con. Lim., 98-101.) Read it in connection with article 15, sections 1 and 2 of your Constitution, and tell me, gentlemen, tell me if the latter falls not far short of the requirements of the former?

I read a line from Mr. Story. (These are books that our young friends on the other side commended to us so highly and heartily the other day. We thank them for their commendation of and reference to them, because otherwise we might not have found them or known there was any such books in existence.) I refer to section 125. I desire to call your attention to this because it seems to me to give you the key to the situation: "Congress has unhesitatingly adopted the conclusion that no previous statute is necessary to authorize an impeachment for any official misconduct, and the rules of proceeding and the rules of evidence, as well as the principles of decision, have been uniformly regulated by the known doctrines of the common law and parliamentary usages. In the few cases of impeachment which have hitherto been tried, no one of the charges has rested upon any statutable misdemeanor. It seems then to be the settled doctrine of the High Court of Impeachment that, though the common law can not be a foundation of a jurisdiction not given by the Constitution or laws, that jurisdiction, when given, attaches, and is to be exercised according to the rules of the common law, and that what are and what are not high crimes and misdemeanors is to be ascertained by a recurrence to that great basis of American jurisprudence."

Under the Constitution of the United States the words of the impeaching article are that the civil officers of the government may be impeached for treason, bribery or other high crimes and misdemeanors. Now the words of the Constitution itself give to Congress jurisdiction over high crimes and misdemeanor in express words, and Mr. Story says, that when jurisdiction is thus given, when it thus attaches, then it is incumbent upon the High Court of Impeachment to recur from the words from which the jurisdiction is derived, to see whether or no common law crimes, crimes not statutory, are meant and comprehended within the meaning of the words high crimes and misdemeanors; but until the article of itself shall give you, as a Court of Impeachment, jurisdiction to take cognizance of high crimes and misdemeanors, that they can not be considered; they can not be weighed by you, because Story says you have no power, save that which is given you by the Constitution or the law. No power, under the Constitution of the State of Texas, is given to this court to consider a felony, high crime or even a misdemeanor. Has jurisdiction attached in this court and thus given you power to consider what those words high crimes and misdemeanors mean? If yes, I am wholly ignorant of any provision, clause or word of the Constitution or in the law that has conferred it on you.

But I pass from that part of my argument.

[The President here called Mr. Walton to order, and informed him that the time allotted him had been exhausted. On motion of Senator Imboden, the time was extended, and the speaker allowed to finish his argument.]

Major Walton then continued:

I hope that nothing will be lost by this grant of favor to me, because this is a most interesting matter, and one that I know every member of this court is anxious to know all there is about it, from its inception to its ending. It is a large question. It runs over a field of over 500 years, and we have been compelled not only to discuss the common law of England, but that of the United States and of the different States of the American Union. It is a large field, and I hope this extension of time will not do other than result in good.

The next proposition that I come to is, that if the Constitution executes itself, then I address myself to what offends this court can take cognizance of, by way of entertaining and adjudicating matters presented by articles of impeachment. To what do we refer? The history of the law in Texas has been and is, as written upon the statutes of our State, that criminal law in Texas should be *written law*, and that no man shall be punished for any offense where the offense has not been previously defined and written down in the statutes and published to the world, to govern the citizenship in action. Let us look at that a moment. I call attention to article 1 of the Criminal Code of this State. Let us see whether or not we can not arrive at the truth about this matter. If we have a system of law that is complete and perfect of itself—and it was the design and intention of our law makers that our system of laws should be perfect of itself, and that, so far as criminal law is concerned, we should have recourse to no act, and no system and no theory, save and except to our own codes—then it seems to me we have gone a long way towards solving the question before this court. “The design of enacting this code is to define in plain language every offense against the laws of this State, and affix to each offense its proper punishment.” (Article 1, Criminal Code Procedure.) This means to define every offense against the laws of the State of Texas and to affix the proper punishment therefor.

It is claimed that this respondent has been guilty of an offense: Before he can be punished for it, that offense must be defined by the law, and the proper punishment affixed to it. But let us go further. “In order that the system of penal laws in force in this State may be complete within itself, and that no system of foreign laws, written or unwritten, may be appealed to, it is declared that no person shall be punished for any act or omission, unless the same is made a penal offense, and a penalty is affixed thereto, by the written law of this State.”

Are you going to punish the respondent? Your statute says you shall not do so, unless the offense you charge against him has been defined, and the punishment therefor prescribed and affixed to it. If you are going to punish this respondent, by what law are you going to punish him? There is no penalty assessed against any act, under the laws of this State, with which he is charged. If you are going to punish him, you will have to appeal to foreign laws—England’s law, across the great ocean, which not one Texan in a thousand knows any more about that he does about the inhabitants in the moon. And yet the High Court of Impeachment of Texas undertakes to punish a citizen under the British law, when our own Texas law says that no unwritten law may be appealed to. No unwritten law may be appealed to. What have my friends on the other side been appealing to for the six hours they addressed this honorable court? They appealed to unwritten law. They appealed to the history of the judicature in England; they appealed to laws of which the people of Texas know nothing; and they appeal to this high court, in the face of our own statutes, and invoke of you a conviction, a judgment and punishment that our own law says shall not be rendered and shall not be administered. Will we be guided by our own laws? Will we take a plain written law here, that a child might understand, or sail away at the instance of my friends on the other side, out into the wide world of unwritten law, forming for 500 years the custom of the old Saxon nation, and put into form by the Norman lawyers, and say that a citizen, and one of your highest officers, shall be punished, not by the laws of Texas, but by the laws unwritten and unknown to our people, unknown to our judicial system or our history? I cannot believe the members of this court will entertain for a moment the proposition that they will go out into the field of experiment, and such a dangerous one as that to which they are invited.

Gentlemen of the court, can you tell me what sections 1 and 2, of article 15,

of the Constitution means? Is it written in such plain words that you understand it? I confess that I do not understand it. I confess that the only mode by which I can understand it, is to go back through the constitutions of the other States, and to go back to the history of impeachments, and then to compare the systems in foreign lands with our own domestic system, and arrive at conclusions by comparison and induction as to what this article means; and it comes directly under the sixth proposition of our Penal Code, for we cannot understand it and don't know what it means, and it is dangerous ground to undertake blindly—for it is nothing less than judicial blindness—to enforce any such law as that. Is it possible that on such a doubtful proposition as that—doubtful whether you can reach out under the jurisdiction given you and bring home unknown, undefined, unwritten offenses and apply them to this man; doubtful whether you have any jurisdictional power whatever under this provision of the Constitution; under such premises are you going to indulge in the experiment of taking on officer from his high office and degrade and ruin him and his family forever? No, gentlemen of the court, it is a safe proposition that you will keep within view your own statute that is a written direction to you. The article to which I refer is as follows: "Whenever it appears that a provision of the penal law is so indefinitely framed or of such doubtful construction, that it cannot be understood, either from the language in which it is expressed, or from some other law of the State, such penal law shall be regarded as wholly inoperative. (P. C., art. 6.)

The fifteenth article of the Constitution is penal in its character, in that it takes away from a man his property, and his rights of franchise as a citizen of Texas. It is penal in its character.

Gentlemen of the court, you are Senators of the State of Texas. If there be doubt in the provision of the impeachment articles of the Constitution; if it be true that it can not be determined from the words of said article, nor from the context, what its real intention and meaning are, what is your duty? I repeat it: What is your duty—your highest duty—to the law, your country, and the people of this great State? It is to present a constitutional amendment of this article to the people of Texas, so that hereafter no court can be left in doubt as to the meaning of the constitutional provision on the important, but illy understood, subject of impeachment. This Constitution was made by men—imperfect men. Men who were as full of frailty as all men must be. Act like men. Act like Senators of the State of Texas, and see to it that hereafter there shall be no doubt as to what this particular article of the Constitution means.

The statute says: "This code, and every other law upon the subject of crime which may be enacted, shall be construed according to the plain import of the language in which it is written, without regard to the distinction usually made between the construction of penal laws, and laws upon other subjects, and no person shall be punished for an offense which is not plainly made penal by the plain import of the words of the law. (Penal Code, art. 9). And yet here is this man to be punished—penally punished—his property taken away and his rights forfeited, and there is no word, plain or otherwise, in the penal laws which defines or puts punishment against any act charged against him. I wish I could give every member of the court the comprehension I have of the crisis in which we are trembling. I wish you could see the danger, the wrong and legal outrage that threatens the respondent—not not threatens respondent, but threatens the right and truth of law, its dignity, purity, and integrity. Gentlemen, let me appeal to you, by warning and admonition, to uphold the Constitution and vindicate the law. They are the bulwarks of liberty. Thrown down, freedom shrieks, and anarchistic confusion will flow in like the resistless waves of the mad-dened ocean when the sea walls are broken away. But I proceed:

Article 26 of the penal statute comes back to the question put by Senator Swayne. It defines what a criminal action is; not a criminal act, but what in the courts of a country shall be defined and accepted as a definition of a of a criminal action, in contradistinction to a civil action. It makes the distinction beyond doubt, and if there had been doubt heretofore, there can be no more doubt. "A *criminal action* as used in this code means the whole, and any part, of the procedure which the law provides for bringing offend-

ers to justice;" and the terms "prosecution," "criminal prosecution," "accusation" and "criminal accusation" are used in the same sense.

Is the respondent in this case an offender? Has he offended against the laws of Texas? Has he offended the laws of England? Has he offended the laws of the United States? Is this proceeding that has been instituted against him a criminal prosecution, for the purpose of bringing him to justice for the offense which he has committed? If so, then it is a criminal action, and not a civil action, and before you can bring him to punishment for his offenses his offenses must be written in the laws of this State and the penalty affixed.

But I pass on.

What is an offense? It is possible that my friends on the other side have charged this man with no offense. If they have charged him with an offense, then, under the laws of Texas, that offense must be defined in the Penal Code before the party can be punished for it. An offense is an act or omission forbidden by positive law, and to which is annexed, on conviction, any punishment prescribed in the code that is applicable thereto. Has he been guilty of an offense? Is he to be punished because he has offended? If he has offended and must be punished for that offense, then this law says he shall not be punished until the offense is defined and the punishment affixed to it.

Let me read one other article of the code; and I desire the mind of every member of this court to grasp hold of what its lines mean and to see whether or no there is not laid down in the statutes here every offense with which a citizen of Texas can be charged. I ask you to listen to it and to read it for yourselves as you all have the statutes before you.

Article 52, Penal Code: "An offense is an act or omission forbidden by positive law, and to which is annexed, on conviction, any punishment prescribed in this code."

Article 53. Offenses are subdivided into felonies and misdemeanors.

Article 57. Subdivision and classification of offenses:

1. Offenses against the State, its territory, property and revenue.
2. Offenses affecting the executive, legislative and judicial departments of the government.
3. Offenses against the right of suffrage.
4. Offenses which affect the free right of religious opinion.
5. Offenses against public justice.
6. Offenses against the public peace.
7. Offenses against public morals, decency and chastity.
8. Offenses against public policy and economy.
9. Offenses against public health.
10. Offenses affecting property held in common for the use of the public.
11. Offenses against trade and commerce and the current coin.
12. Offenses against the persons of individuals.
13. Offenses against reputation.
14. Offenses against property.
15. Miscellaneous offenses.

Article 58, Penal Code—Punishments:

1. Death.
2. Imprisonment in the penitentiary for life or for a period of time.
3. Imprisonment in the county jail.
4. *Forfeiture of civil and political rights.*
5. Pecuniary fines.

Is this man charged with an offense against the State? If not with an offense against the State, he is not charged with any offense at all; and yet in the Criminal Code of this State every offense that a citizen can be guilty of against the State of Texas is laid down and defined.

When the codifiers had gone on from offense to offense, and act to act, and searched their minds deeply and exhaustively, and found every offense and every act that could be committed as to the person and property and rights, defining each and every one, and supplying opposite to each and every one its proper, appropriate and adequate punishment, then, in order that anything possibly omitted might be covered, a miscellaneous set of offenses were named and defined. So I say that under the laws of the State of Texas there is no offense that man can commit against Texas, the people

thereof, property or property rights but what is mentioned and provided for in the foregoing articles. If that be the case, keeping in view that the law of Texas is designed to be perfect within itself, all foreign laws cut off, and that every offense in Texas must be named in this code, my friends, the managers, have evidently and certainly failed to make any charge against respondent that is known to the penal laws of Texas, or that come under the pain of Texas condemnation; and yet they ask you to convict and punish him outside of the laws of the State of Texas, against the system, intent, provisions and meaning of the Texas system of laws, and to punish him under the unknown British law that never existed in Texas nor on American soil after American independence.

Just another step in that direction: These are the offenses and the punishments. Imagine, if you can, a punishment that is not included here in the laws of the State of Texas. First, there is death, second, imprisonment in the penitentiary for life or shorter period; imprisonment in the county jail; forfeiture of civil and political rights, and pecuniary fine. Imagine a punishment that can be inflicted that does not come under one of the heads as laid down in your Penal Code.

It was a question a long time, gentlemen of the court, as to whether, under the laws of the United States, the courts of the United States could take cognizance of any common law offenses, and while the war between court and court continued for some fifty years, yet it has been brought down to a certainty and admitted fact in law, that the courts of the United States have no jurisdiction over common law offenses, and that no man can be punished in the courts of the United States, save and except under the statutes which have been passed by the Federal government; then, how is it that in Texas, where the common law never was enforced, except for a short time in 1840, and only enforced then where our statutes were so meager as not to reach, cover and punish crimes as it was desired should be the case; though immediately after the code was framed, and at the time it was framed, and long before it was framed, the common law offenses were abolished, and there were no common law offenses after 1855 known in Texas; and up to this blessed hour there have been no common law offenses. And yet, gentlemen, we have you, in this day, when we have been a sovereign State for more than fifty years, we have you abandoning our entire system of laws and going back to the offenses known to the common law, and here without authority and without constitutional right, and without the authority of the law itself, to bring respondent to the bar of public justice and punish him for offenses known only to the common law across the water.

There are many authorities I might read; but I am wearying you and am worn myself, and must hasten to a conclusion.

If the court have the lawful right to ignore Texas law and take jurisdiction of and try respondent under the British law, then, according to that law, for what offenses can you convict and punish him? What is the character, grade and degree of offense you can entertain? Our friends on the other side say that our demurrer is limited to indictable offenses, but I beg their pardon. We do not mention indictable offense in the entire demurrer. We say there is no impeachable matter alleged, no allegation of matter *mala in se*, nor is there anything alleged against this respondent *mala prohibita*. That is our demurrer. We say nothing about indictable offenses. But let it go at that, and then let us see whether the articles are sustainable under the British law. There is no indictable offense under the laws of Texas alleged against respondent. Is there an indictable offense alleged against him under the common law of England, and would the articles be entertained if presented to the House of Lords; would they be entertained for a moment? If a demurrer were presented against the articles would the House of Lords entertain them? If the House of Lords would not have entertained them, then I ask if, after you have abandoned Texas law, abandoned Texas system, abandoned Texas judicial history, and gone back to the common law, gone back to the parliamentary law, can you then, under those laws, receive, present, entertain and try on articles of the character here presented, and would they be entertained in England? I say to you no, they would not be entertained; and I will give you the proof if you will take authority for it.

I say to this court, that under the common law and the parliamentary law.
H—Ct. Jour.

of England that governed impeachments, that there is no impeachable offense in England unless it was an indictable offense. That since the year 1725, long before our government had existence, there has never been in England articles of impeachment sustained that were not based on indictable offenses, and that if articles of impeachment were based on other than indictable offenses, the respondent was discharged upon that ground alone.

Blackstone says, on page 259, volume 4, giving you an insight into the English law (and no lawyer will pretend that Blackstone is not a reflex of the entire law of England, statutory and common law; no lawyer will hazard his reputation by denying it; and what Blackstone, the English law writer, says we may accept here in Texas as the law of England at the time he wrote). He says:

"But an impeachment before the Lords by the Commons is a prosecution of the already known and established law." That an impeachment by the Commons to the House of Lords is based on the already known and established law of England.

Another proposition that no lawyer will deny is, that there is not a solitary misdemeanor at common law that was not indictable. There was not a solitary misdemeanor by statutory law in England that was not indictable. So that under the English rule, treason, murder and all of the felonies and misdemeanors under the common law, and all misdemeanors under the statute law were indictable in the King's Bench. So that in England there could be no impeachment that was not founded upon an indictable offense. Now, that being the case, we will take the last case of impeachment that was ever tried in England, which was in 1805. It was the impeachment of Lord Melville. His crime was the appropriation of public moneys of which he was the custodian. But the appropriation of the money was not made with bad intent. The appropriation of the money was made under circumstances that had palliation about it. The money was gone. He was a public officer and custodian of the money, and because of the misappropriation of this money, he was charged by articles of impeachment, and the facts were all drawn out, in substance as I have stated them to you, and after the testimony was drawn out the question was submitted to the judges of the high court of England. The House of Lords did not depend on their judgment as to whether the acts preferred were impeachable, but they called in the Supreme Justice and his associates, and questions were put to that high court whether or not the offenses alleged were impeachable in character.

Here is the question, on page 1470 of Howell's State Trials: "When the facts were stated to the Supreme Court of England, chief justice presiding, and the facts were presented, they were asked whether or not that was an offense against the laws of England, to which they unhesitatingly answered No, and on that fact Lord Melville was acquitted, because he was not charged with an indictable offense." In 1725 the Lord Chancellor of England was charged with receiving bribes. He had authority to make appointments of masters in chancery, but instead of appointing, as our judges do, he took money, large bonuses, presents or bribes, for the exercise of his judicial functions. He took as much as five and ten thousand pounds for the bestowal of positions. It was the money he was after, and not honest, efficient public service. After so long a time, and a life of honor and uprightness, he fell away, and was impeached for receiving bribes in his character as an official; and as Lord Chancellor of England articles of impeachment were presented against him for receiving bribes. He was convicted, and why? because the receiving of bribes was contrary to the laws of Henry VI, which prohibited chancellors and judges of the common law courts from receiving presents in their official character. He was convicted because, and only because, he had violated the statute laws of England, and had committed an indictable offense. Here is an account of that case, and many others than those I name, by Lord Chancellor Campbell, in his "Lives of the Chancellors," and he gives all the facts and circumstances of each case. Surely we might rest here, so far as authority is concerned, but we have two cases in Texas that may not be passed lightly. In 1874-75 there were two impeachment cases against district judges before the Senate of Texas, sitting as a High Court of Impeachment. The first was that of Wm. H. Russell. The articles of impeachment did not charge against him any vio-

lation of the criminal laws of Texas, but did charge him with an infraction of all the decencies and proprieties that belong to the bench, including tyranny, oppression in office, and all manner of conduct unbecoming the dignity of a judge. To these articles a demurrer was applied, on the ground that they contained no impeachable matter, just as the demurrers state in this case. Argument ensued, and in that case, as in this, among the managers for the House were some of the ablest lawyers in Texas; but after consideration the court sustained the demurrer and dismissed the articles. (Senate Journal, 1871-72.)

The other case was that of Judge William Chambers. The articles against him embraced charges alleging violations of the criminal laws of Texas. To these charges a general demurrer was interposed, and it was overruled, and the case proceeded to trial on its merits. (Senate Journal, 1874-75.)

These cases, as precedents, ought to be conclusive on Texas practice in impeachment proceedings. It happened to fall to my lot to make the defense of Judge Russell. One of the gentlemen managers, referring to some remarks by Mr. Faulk, my associate, on yesterday, in regard to the manner and circumstances of the impeachment of President Andrew Johnson, said that they appealed to the prejudices and passions of this court, and he spoke of the Twelfth Legislature and attempted to array you against it. God knows I have no apology to make for the Twelfth Legislature, but I do stand here in my place to-day and say that in the Senate of that Legislature there was an array of talent, an array of statesmanship, an array of patriotism, that equals the present Legislature or any that ever sat in the State of Texas in a Legislature.

Among the men who were in that Senate in defense of law, right and justice, and who sat as a bulwark, was the lamented Bowers of this city, a man of splendid talent and principle, upon whom there was no shade or stain. There was Jim Douglass of Smith, who stands to-day the peer of any man in Texas, and I could name others of them who stood here as immovable barriers to radical aggression, and by the grace of God they saved, to a great extent, the rights and liberties of the people of the State of Texas by the fight they made. There was Cole, Boughton, Shannon and Lane, Parsons and Pickett, the president of your last State convention, men who, most of them, have passed beyond the river now, but when they were here among us it was an honor to take them by the hand and call them friend, and no man in Texas ever yet stood with prouder fame or greater honor than those men, and they were the men who, having the Constitution as a guiding star and the law as a compass, sustained the demurrer in that case. I take it that it comes in bad grace from the managers in this case to undertake to slander the character of the dead, and to cast clouds on the reputations of living men who stand as fair as any manager or Senator in this house.

We have sought, gentlemen of the court, to establish before you the following propositions:

1. That impeachment is a criminal action.
2. That this is a criminal court.
3. That the impeachment article of the Constitution, sections 1 and 2, are not self-executing.
4. If self-executing, then that the only impeachable matter of which this court can take cognizance consist in charged violations of the known and adequately defined criminal laws of this State.
5. That under the common law and parliamentary law of England impeachment was confined to the violation of well known, established, public criminal law—and therefore indictable offenses.

If we have failed in either of these five points, it has not been from the want of abundant authority—and must have resulted from our unskilful handling of the material at our disposal.

We now come to our last proposition, which is the Gibraltar of our friends on the other side. We promised to meet them on this proposition, and we do so, without apprehension that we shall utterly overthrow them and abundantly sustain ourselves.

Concede, gentlemen of the court, if your judgments are satisfied, that we have failed so far to interpose between respondent and your jurisdiction to try these articles preferred against him, any insuperable barrier in law,

authority, precedent or practice; we then say that the articles are still insufficient, in substance, to warrant a trial, and that if tried, and conviction follows, then that they will not sustain or bear up a judgment.

The managers say that common law misdemeanors, though not indictable, wholly unknown to the Criminal Codes of Texas, alien to our system of government, and abhorrent to the genius of our institutions, will support impeachment, and contain impeachable matter of which this court has jurisdiction and on which it can hear evidence, try their truth, convict and punish any executive officer so charged.

Driven to this extremity by concession, we still stand on the defensive and say with the remainder of our strength, protected by the breastworks of logic, reason, law and love of country, that the proposition cannot be true, is not true, unless the misdemeanor sounds in willful, wrong and corrupt purposes, motivated by deliberative intention to prostitute office, to work harm to others, or reap personal advantage to the actor.

On this rock we stand, and boldly defy assault. We can not be moved, we can not be shaken, until the assailants have discredited the theory of crime known to the American people—and all the law writers upon whose writings American opinion is founded. Time nor strength will permit me to read from the books; but I refer to some of them to the end that they may be read by those whose duty, curiosity or inclination shall induce them to investigate: 1 Russell on Crime, 61; American Criminal Law, section 4a; *Alcorn v. State*, 56 Texas; Bishop on Crimes, section 460; 6 Am. Law Register, Articles Impeachment; Throop on Public Officers, sections 855-6; Story on Constitution, section 125; Pomeroy on Constitution, 728. The list might be indefinitely lengthened, but it is needless, useless, and we refrain.

My departing strength admonishes me to cease. I am done. To the best of my ability, honestly, faithfully, truthfully, have I presented to you what I believe to be the law of the Constitution, and the statutes of Texas, on the subject matter before this court. I have attempted to conceal nothing. I have concealed nothing from the court. It was and is your unquestioned right to demand of me a candid presentation of all I know, of all, after labored research, I have learned on this great question of constitutional law and human right. To fulfill and comply with that demand has been my effort and my desire.

Between the respondent and what I esteem a wrongful prosecution, and it may be an unjust conviction, I have, gentlemen, interposed the Constitution and the laws of the State of Texas. "If it be, that you shall pierce through then and strike him down, he will be but one victim among the many sufferers in the great catastrophe." If he falls under the circumstances which surround him here, in my humble judgment the right of property, the right a man has to his political franchises, his right to personal protection, the sacredness of the Constitution itself, our great Charter of Rights, as well as the purity and benignity of the law, will have received dangerous wounds. I can do no more.

If I knew how, I would open the gates of the sunlight of truth and flood with it your minds and hearts.

I have done my best, and now leave the case with you, tendering to the court my sincere thanks and gratitude for the courteous extension of time granted, and the marked patience and attention you have accorded to me, and to what I have said.

After the conclusion of the above, on motion of Senator Dean, the court adjourned subject to the call of the Senate:

RECORD

OF THE

COURT OF IMPEACHMENT.

AUSTIN, TEXAS, APRIL 28, 1893.

SENATE CHAMBER,
AUSTIN, TEXAS, April 28, 1893.

The High Court of Impeachment convened as per call of the Senate.

On motion of Senator Cranford, the Senate chamber and galleries were cleared in order that the Senate might proceed to consider the demurrers of respondent W. L. McGaughey, as per rule 14 of the court.

The Senate then proceeded to consider the general demurrer.

First part of general demurrer read, to-wit:

The State of Texas vs. W. L. McGaughey.

In the Senate of the Twenty-third Legislature of the State of Texas, sitting as a high court of impeachment.

And now comes defendant, W. L. McGaughey, in his own proper person, and demurs generally:

First. To the jurisdiction and power of this high Court of Impeachment under the Constitution and Laws of the State of Texas to receive articles of impeachment against him; to cause him to appear before it and demur, plead or answer to said articles of impeachment, or to any one or more of them, or to put him on trial, or to try him, or to render or enter or record any judgment against him, because he says that sections 1 and 2, article 15 of the Constitution, as do the laws of the State of Texas, fail to define any crimes or offenses for which an impeachment will lie, that said sections and article of the Constitution are not self-executing, but require legislation to put said sections of said article into operation.

The question, shall the demurrer be sustained?

It was decided in the negative by the following vote:

YEAS—8.

Agnew,
Baldwin,
Goss,
Shelburne,

Simpson,
Smith,
Swayne,
Woods.

NAYS—19.

Atlee,
Boren,
Bowser,
Cranford,
Dean,
Dickson,
Douglass,
Greer,
Hutchison,
Imboden,

Jester,
Kearby,
Lawhon,
Lewis,
McKinney,
Presler,
Steele,
Tips,
Yoakum.

ABSENT—2.

Crowley,

McComb.

EXCUSED—2.

Browning,

Whitaker.

The second part of general demurrer read, to-wit:

Second. He demurs to the several, each and all of the articles of impeachment presented against him in these impeachment proceedings, because there is not contained in them, nor in any of them, any impeachable matter under the Constitution and laws of the State of Texas, and because there is no treason, no bribery, no high crimes and no misdemeanor therein alleged against him that are impeachable under the Constitution and laws of the State of Texas; and because there is no matter or thing therein alleged against him evidencing corruption on his part in the administration of the business of the General Land Office of the State of Texas, and manifesting no act on his part, mala in se nor mala prohibita, that subjects him to impeachment under the Constitution and laws of the State of Texas; and of this he prays the judgment of the High Court of impeachment.

The question, shall the demurrer be

sustained? It was decided in the negative by the following vote:

YEAS—11.

Agnew,	Shelburne,
Baldwin,	Simpson,
Goss,	Smith,
Hutchison,	Swayne,
Jester,	Woods,
Kearby,	

NAYS—16.

Atlee,	Imboden,
Boren,	Lawhon,
Bowser,	Lewis,
Cranford,	McKinney,
Dean,	Presler,
Dickson,	Steele,
Douglass,	Tips,
Greer,	Yoakum.

ABSENT—2.

Crowley,	McComb.
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EXCUSED—2.

Browning,	Whitaker.
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SPECIAL DEMURRER.

Action being taken as per rule 14.

First subdivision of demurrer to article 1 of the impeachment read, to-wit:

1. That it contains no impeachable matter or facts, nor charges any corruption or wilful wrong.

The question shall this part of the special demurrer be sustained?

It was decided in the negative by the following vote:

YEAS—13.

Agnew,	Kearby,
Baldwin,	Shelburne,
Dean,	Simpson,
Douglass,	Smith,
Goss,	Swayne,
Hutchison,	Woods.
Jester,	

NAYS—14.

Atlee,	Lawhon,
Boren,	Lewis,
Bowser,	McKinney,
Cranford,	Presler,
Dickson,	Steele,
Greer,	Tips,
Imboden,	Yoakum.

ABSENT—2.

Crowley,	McComb.
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EXCUSED—2.

Browning,	Whitaker.
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Second subdivision of demurrer to article 1 of impeachment read, to-wit:

2. "It alleges matters transpiring prior to the commencement of defendant's time of office which are not, under the Constitution and laws of Texas, can not be matters on which to base an impeachment of him and his removal from office."

The question, shall the demurrer be sustained? was decided in the negative by the following vote:

YEAS—13.

Agnew,	Shelburne,
Baldwin,	Simpson,
Goss,	Smith,
Hutchison,	Swayne,
Jester,	Woods,
Kearby,	Yoakum.
McKinney,	

NAYS—14.

Atlee,	Greer,
Boren,	Imboden,
Bowser,	Lawhon,
Cranford,	Lewis,
Dean,	Presler,
Dickson,	Steele,
Douglass,	Tips.

ABSENT—2.

Crowley,	McComb.
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EXCUSED—2.

Browning,	Whitaker.
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The question shall the first part of special demurrer to article 2 of impeachment be sustained? was decided in the negative by the following vote:

YEAS—12.

Agnew,	McKinney,
Baldwin,	Shelburne,
Goss,	Simpson,
Hutchison,	Smith,
Jester,	Swayne,
Kearby,	Woods.

NAYS—14.

Atlee,	Imboden,
Boren,	Lawhon,
Bowser,	Lewis,
Cranford,	Presler,
Dean,	Steele,
Dickson,	Tips,
Greer,	Yoakum.

ABSENT—3.

Crowley,	McComb.
Douglass,	

EXCUSED—2.

Browning,	Whitaker.
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The question, shall the second part of special demurrer to article 2 of the articles of impeachment be sustained? was decided in the negative by the following vote (not a majority to sustain):

YEAS—13.

Agnew,	Shelburne,
Baldwin,	Simpson,
Goss,	Smith,
Hutchison,	Swayne,
Jester,	Woods,
Kearby,	Yoakum.
McKinney,	

NAYS—13.

Atlee,	Imboden,
Boren,	Lawhon,
Bowser,	Lewis,
Cranford,	Presler,
Dean,	Steele,
Dickson,	Tips.
Greer,	

ABSENT—3.

Crowley,	McComb.
Douglass,	

EXCUSED—2.

Browning,	Whitaker.
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The first subdivision of special demurrer to article 3 of impeachment read, to-wit:

To article 3:

1. The same as to articles 1 and 2 as above.

The vote occurring upon demurrers to article 1, to-wit:

1. "That it contains no impeachable matter or facts, nor charges any corruption or willful wrong," the question, shall the demurrer be sustained? was decided in the negative by the following vote:

YEAS—12.

Agnew,	Kearby,
Baldwin,	Shelburne,
Douglass,	Simpson,
Goss,	Smith,
Hutchison,	Swayne,
Jester,	Woods.

NAYS—15.

Atlee,	Lawhon,
Boren,	Lewis,
Bowser,	McKinney,
Cranford,	Presler,
Dean,	Steele,
Dickson,	Tips,
Greer,	Mr. President.
Imboden,	

ABSENT—3.

Crowley,	Yoakum.
McComb,	

EXCUSED—5.

Browning,	Whitaker.
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The second part of the first subdivision of the demurrer to article 3 of impeachment read, to-wit:

2. It alleges matters transpiring prior to the commencement of defendant's time of office, which are not, under the Constitution and Laws of Texas, can not be matters on which to base an impeachment of him and his removal from office.

The question, shall the demurrer be sustained? was decided in the negative by the following vote:

YEAS—13.

Agnew,	Shelburne,
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Baldwin,	Simpson,
Douglass,	Smith,
Goss,	Swayne,
Hutchison,	Woods,
Jester,	Yoakum.
Kearby,	

NAYS—14.

Atlee,	Imboden,
Boren,	Lawhon,
Bowser,	Lewis,
Cranford,	McKinney,
Dean,	Presler,
Dickson,	Steele,
Greer,	Tips.

ABSENT—2.

Crowley,	McComb.
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EXCUSED—2.

Browning,	Whitaker.
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Pending further consideration,
On motion of Senator Agnew the court adjourned to 2:30 p. m.

AFTERNOON SESSION.

The High Court of Impeachment convened as per call of Senate.

Senator Dickson moved that the officers of the Senate and newspaper men be permitted to remain in the Senate chamber.

Senator Lawhon moved as a substitute that the court conclude the consideration of the demurrers with open doors.

Lost by the following vote:

YEAS—11.

Agnew,	Jester,
Bowser,	Lawhon,
Crowley,	Presler,
Dean,	Shelburne,
Greer,	Swayne.
Hutchison,	

NAYS—15.

Atlee,	Kearby,
Baldwin,	Lewis,
Boren,	McKinney,
Cranford,	Simpson,
Dickson,	Steele,
Douglass,	Tips,
Goss,	Woods.
Imboden,	

ABSENT—3.

McComb,	Yoakum.
Smith,	

EXCUSED—2.

Browning,	Whitaker.
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Senator Dickson's motion was then adopted by the following vote:

YEAS—16.

Agnew,	Hutchison,
Baldwin,	Imboden,
Bowser,	Lawhon,
Crowley,	Lewis,

Dean,
Dickson,
Goss,
Greer,

Presler,
Shelburne,
Simpson,
Swayne.

NAYS—10.

Atlee,
Boren,
Cranford,
Douglass,
Kearby,

McKinney,
Smith,
Steele,
Tips,
Woods.

ABSENT—3.

Jester,
McComb,

Yoakum.

EXCUSED—2.

Browning, Whitaker.

Senator Cranford moved to reconsider the vote by which the Senate excluded visitors.

Reconsidered.

The motion to consider with open doors was adopted.

Second subdivision of demurrer to article 3 read, to-wit:

"Because it affirmatively appears on the face of said article 3 that the alleged sale to C. D. Dollon of section of land 16, section 24, section 34, section 84, in block No. 2, Houston and Texas Central railroad, Harris county, Texas, were made on the 14th of October, 1892, which was a day and time prior to the commencement of defendant's present term of office, and so far as said sales are concerned, they constitute no grounds for his impeachment and removal from the office he now holds."

The question shall the demurrer be sustained? was decided in the negative by the following vote:

YEAS—11.

Agnew,
Baldwin,
Goss,
Hutchison,
Jester,
Kearby,

Shelburne,
Simpson,
Smith,
Swayne,
Woods.

NAYS—15.

Atlee,
Boren,
Bowser,
Cranford,
Dean,
Dickson,
Douglass,
Greer,

Imboden,
Lawhon,
Lewis,
McKinney,
Presler,
Steele,
Tips.

ABSENT—3.

Crowley,
McComb,

Yoakum.

EXCUSED—2.

Browning, Whitaker.

The first subdivision of special demurrer to article 4 of impeachment read, to-wit:

That it contains no impeachable matter or facts, nor charges any corruption or willful wrong.

The question shall the demurrer be sustained? was decided in the negative by the following vote:

YEAS—13.

Agnew,
Baldwin,
Crowley,
Dean,
Goss,
Hutchison,
Jester,

Kearby,
Shelburne,
Simpson,
Smith,
Swayne,
Woods.

NAYS—14.

Atlee,
Boren,
Bowser,
Cranford,
Dickson,
Douglass,
Greer,

Imboden,
Lawhon,
Lewis,
McKinney,
Presler,
Steele,
Tips.

ABSENT—2.

McComb, Yoakum.

EXCUSED—2

Browning, Whitaker.

Second part of the first subdivision of the demurrer to article 4 of impeachment read, to-wit:

"They allege matters transpiring prior to the commencement of defendant's time of office, which are not, under the Constitution and Laws of Texas, can not be matters on which to base an impeachment of him and his removal from office."

The question, shall the demurrer be sustained? was decided in the negative by the following vote:

YEAS—12.

Agnew,
Baldwin,
Crowley,
Goss,
Hutchison,
Jester,

Kearby,
Shelburne,
Simpson,
Smith,
Swayne,
Woods.

NAYS—14.

Atlee,
Boren,
Bowser,
Cranford,
Dean,
Dickson,
Douglass,

Greer,
Imboden,
Lawhon,
Lewis,
Presler,
Steele,
Tips.

ABSENT—3.

McComb, McKianey,

Yoakum.

EXCUSED—2.

Browning, Whitaker.

The third part of first subdivision of the demurrer to article 4 of impeachment read, to-wit:

"Because it affirmatively appears on the face of said article 3 that the alleged sale to C. D. Dollon of section of lands 16, section 24, section 34, section 84, in block No. 2, Houston and Texas Central railroad, Harris county Texas, were made on the 14th of October 1892, which was a day and time prior to the commencement of defendant's present term of office, and so far as said sales are concerned, they constitute no grounds for impeachment and removal from the office he now holds."

The question shall the demurrer be sustained? was decided in the negative by the following vote (no majority):

YEAS—13.

Agnew,	Jester,
Baldwin,	Kearby,
Crowley,	Shelburne,
Douglass,	Simpson,
Goss,	Smith,
Hutchison,	Swayne,
Woods,	

NAYS—13.

Atlee,	Imboden,
Boren,	Lawhon,
Bowser,	Lewis,
Cranford,	Presler,
Dean,	Steele,
Dickson,	Tips.
Greer,	

PRESENT, NOT VOTING—1.

McKinney.

ABSENT—2.

McComb, Yoakum.

EXCUSED—2.

Browning, Whitaker.

The second subdivision of demurrer to article 4 of impeachment read, to-wit:

"2. And because the sale of lands to C. D. Dollon, sections 16, 24, 34 and 84, block 2, Houston and Texas Central Railroad Company, Harris county, and the sale of section 18 to J. I. Dillon, and section 64 to I. C. Stafford, and section 82 to P. M. Cuney, all in same block of land, are affirmatively alleged to have been made not later than the 23d day of October, 1892, which was a day and time prior to the commencement of defendant's present term of office, and affords under the Constitution and laws of Texas no grounds for his impeachment nor for his removal from the office he now holds after election thereto subsequent to the happening of the matters, things, acts and facts alleged against him in said article 4."

The question, shall the demurrer be sustained? was decided in the negative by the following vote:

YEAS—12.

Agnew,	Kearby,
Baldwin,	Shelburne,
Crowley,	Simpson,
Goss,	Smith,
Hutchison,	Swayne,
Jester,	Woods.

NAYS—15.

Atlee,	Imboden,
Boren,	Lawhon,
Bowser,	Lewis,
Cranford,	McKinney,
Dean,	Presler,
Dickson,	Steele,
Douglass,	Tips.
Greer,	

ABSENT—2.

Yoakum. McComb,

EXCUSED—2.

Browning, Whitaker.

First subdivision of special demurrer to articles 5 and 6 of the articles of impeachment read, to-wit:

1. That they contain no impeachable matter or facts, nor charge any corruption or willful wrong.

The question shall the demurrer be sustained? It was sustained by the following vote:

YEAS—14.

Agnew,	Jester,
Baldwin,	Kearby,
Crowley,	Shelburne,
Dean,	Simpson,
Douglass,	Smith,
Goss,	Swayne,
Hutchison,	Woods.

NAYS—13.

Atlee,	Lawhon,
Boren,	Lewis,
Bowser,	McKinney,
Cranford,	Presler,
Dickson,	Steele,
Greer,	Tips.
Imboden,	

ABSENT—2.

McComb, Yoakum.

EXCUSED—2.

Browning, Whitaker.

On motion of Senator Dean the court proceeded to the consideration of the demurrer to the next article (7th).

Demurrer to article 7 of impeachment read, to-wit:

"It contains no impeachable matter, especially when taken in connection with articles 1, 2, 3, 4, 5 and 6."

The question, shall the demurrer be sustained? was decided in the negative by the following vote:

YEAS—12.

Agnew,	Kearby,
Baldwin,	Shelburne,

Crowley,
Goss,
Hutchison,
Jester,

Simpson,
Smith,
Swayne,
Woods.

NAYS—15.

Atlee,
Boren,
Bowser,
Cranford,
Dean,
Dickson,
Douglass,
Greer,

Imboden,
Lawhon,
Lewis,
McKinney,
Presler,
Steele,
Tips.

ABSENT—2.

McComb,

Yoakum.

EXCUSED—2.

Browning,

Whitaker.

First part of special demurrer to article 8 of impeachment read, to-wit:

"1. It contains no impeachable matter. The calling on the Attorney-General for his opinion is a privilege and not a duty."

The question, shall the demurrer be sustained? was sustained by the following vote:

YEAS—21.

Agnew,
Atlee,
Baldwin,
Crowley,
Dean,
Douglass,
Goss,
Greer,
Hutchison,
Jester,
Kearby,

Lawhon,
McKinney,
Peesler,
Shelburne,
Simpson,
Smith,
Steele,
Swayne,
Tips,
Woods.

NAYS—6.

Boren,
Bowser,
Dickson,

Greer,
Imboden,
Lewis.

PRESENT, NOT VOTING—1.

Cranford.

ABSENT—1.

McComb.

EXCUSED—2.

Browning,

Whitaker.

On motion of Senator Dean the court proceeded to the consideration of the demurrers to the succeeding articles.

First subdivision of special demurrer to articles 9, 10, 11, 12, 13 and 14 of the articles of impeachment read, to-wit:

1. No impeachable matter alleged, no willful wrong charged, no corruption averred.

The question, shall the demurrer be sustained? was decided in the negative by the following vote:

YEAS—12.

Agnew,

Kearby,

Baldwin,
Crowley,
Goss,
Hutchison,
Jester,

Shelburne,
Simpson,
Smith,
Swayne,
Woods.

NAYS—15.

Atlee,
Boren,
Bowser,
Cranford,
Dean,
Dickson,
Douglass,
Greer,

Imboden,
Lawhon,
Lewis,
McKinney,
Presler,
Steele,
Tips.

ABSENT—2.

McComb,

Yoakum.

EXCUSED—2.

Browning.

Whitaker,

Second subdivision of special demurrer to articles 9, 10, 11, 12, 13 and 14 of impeachment read, to-wit:

2. "All that is alleged amounts to an erroneous construction of the law, with no evil, corrupt or personally advantageous object or purpose in view, inducive to make the erroneous construction."

The question, Shall the demurrer be sustained? was decided in the negative by the following vote:

YEAS—13.

Agnew,
Baldwin,
Crowley,
Dean,
Goss,
Hutchison,
Jester,

Kearby,
Shelburne,
Simpson,
Smith,
Swayne,
Woods.

NAYS—14.

Atlee,
Boren,
Bowser,
Cranford,
Dickson,
Douglass,
Greer,

Imboden,
Lawhon,
Lewis,
McKinney,
Presler,
Steele,
Tips.

ABSENT—2.

McComb,

Yoakum.

EXCUSED—2.

Browning,

Whitaker.

Demurrer to article 15 of impeachment read, to-wit:

"1. Contains no impeachable matter under the Constitution and Laws of the State of Texas."

The question shall the demurrer be sustained? was decided in the negative by the following vote:

YEAS—12.

Agnew,
Baldwin,
Crowley,
Goss,

Kearby,
Shelburne,
Simpson,
Smith,

Hutchison,
Jester,

Swayne,
Woods.

NAYS—15.

Atlee,
Boren,
Bowser,
Cranford,
Dean,
Dickson,
Douglass,
Greer,

Imboden,
Lawhon,
Lewis,
McKinney,
Presler,
Steele,
Tips.

ABSENT—2.

McComb,

Yoakum.

EXCUSED—2.

Browning,

Whitaker.

Demurrer to article 16 of impeachment read, to-wit:

"It contains no impeachable matter. The calling on the Attorney-General for his opinion is a privilege and not a duty."

The question, shall the demurrer be sustained? it was sustained by the following vote:

YEAS—18.

Agnew,
Atlee,
Baldwin,
Crowley,
Dean,
Douglass,
Goss,
Hutchison,
Jester,

Kearby,
Lawhon,
Shelburne,
Simpson,
Smith,
Steele,
Swayne,
Tips,
Woods.

NAYS—9.

Boren,
Bowser,
Cranford,
Dickson,
Greer,

Imboden,
Lewis,
McKinney,
Presler.

ABSENT—2.

McComb,

Yoakum.

EXCUSED—2.

Browning,

Whitaker.

The first subdivision of the special demurrer to articles 17, 18, 19, 20, 23 and 24 of the articles of impeachment read, to-wit:

"1. Alleges no impeachable matter."

The question shall the demurrer be sustained? was decided in the negative by the following vote:

YEAS—12.

Agnew,
Baldwin,
Crowley,
Goss,
Hutchison,
Jester,

Kearby,
Shelburne,
Simpson,
Smith,
Swayne,
Woods.

NAYS—15.

Atlee,
Boren,

Imboden,
Lawhon,

Bowser,
Cranford,
Dean,
Dickson,
Douglass,
Greer,

Lewis,
McKinney,
Presler,
Steele,
Tips.

ABSENT—2.

McComb,

Yoakum.

EXCUSED—2.

Browning,

Whitaker.

By unanimous consent the second and third subdivisions of the above named demurrer were considered together, to-wit:

2. Contains general allegation of matters and things, acts and facts antedating the commencement of defendant's present term of office, and to that extent affords no matter for his impeachment and removal from the office he now holds, the term of which commenced on the 8th day of November, 1892.

3 All such acts antedating his reelection were condoned by such reelection, and now affords no cause for his impeachment and removal from the office he is now holding.

The question shall the demurrer be sustained? It was decided in the affirmative (sustained) by the following vote:

YEAS—14.

Agnew,
Baldwin,
Crowley,
Douglass,
Goss,
Hutchison,
Jester,

Kearby,
McKinney,
Shelburne,
Simpson,
Smith,
Swayne,
Woods.

NAYS—13.

Atlee,
Boren,
Bowser,
Cranford,
Dean,
Dickson,
Greer,

Imboden,
Lawhon,
Lewis,
Presler,
Steele,
Tips.

ABSENT—2.

McComb,

Yoakum.

EXCUSED—2.

Browning,

Whitaker.

The first subdivision to articles 21 and 22 of impeachment read, and on motion of Senator Lewis the first, second and third were considered together, to-wit:

To articles 21 and 22:

1. Contains no impeachable matter:

2. If he, defendant, believed it to the public interest to have the revaluation made, charged against him, it was in his reasonable discretion to have it done.

3. No cerruption, no mala fides, no acts mala in see nor mala inhibita are averred in the articles.

The question, shall the demurrers be sustained? was decided in the negative by the following vote:

YEAS—13.

Agnew,	Kearby,
Baldwin,	Shelburne,
Crowley,	Simpson,
Dean,	Smith,
Goss,	Swayne,
Hutchison,	Woods.
Jester,	

NAYS—14.

Atlee,	Imboden,
Boren,	Lawhon,
Bowser,	Lewis,
Cranford,	McKinney,
Dickson,	Presler,
Douglass,	Steele,
Greer,	Tips.

ABSENT—2.

McComb,	Yoakum.
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EXCUSED—2.

Browning,	Whitaker.
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First subdivision of special demurrer to article 25 of impeachment read, to-wit:

1. No impeachable matter alleged.

The question, shall the demurrer be sustained? was decided in the negative by the following vote:

YEAS—11.

Agnew,	Shelburne,
Baldwin,	Simpson,
Crowley,	Smith,
Goss,	Swayne,
Hutchison,	Woods.
Kearby,	

NAYS—15.

Atlee,	Imboden,
Boren,	Lawhon,
Bowser,	Lewis,
Cranford,	McKinney,
Dean,	Presler,
Dickson,	Steele,
Douglass,	Tips.
Greer,	

ABSENT—3.

Jester,	Yoakum.
McComb,	

EXCUSED—2.

Browning,	Whitaker.
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On motion of Senator Lawhon, subdivisions 2 and 3 of special demurrer to article 25 of impeachment were considered together, to-wit:

"2. No corruption, no mala fides, no acts mala in se nor mala prohibita are alleged.

"3. It is not averred how the false certificate was intended to be used, or could have been used to the prejudice,

harm or hurt of the State of Texas, or the people or any of the people of the State of Texas."

The question, shall the demurree be sustained? was decided in the negative by the following vote:

YEAS—11.

Agnew,	Shelburne,
Baldwin,	Simpson,
Crowley,	Smith,
Goss,	Swayne,
Hutchison,	Woods.
Kearby,	

NAYS—14.

Atlee,	Imboden,
Bowser,	Lawhon,
Cranford,	Lewis,
Dean,	McKinney,
Dickson,	Presler,
Douglass,	Steele,
Greer,	Tips.

ABSENT—4.

Boren,	McComb,
Jester,	Yoakum.

EXCUSED—2.

Browning,	Whitaker.
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Senator Cranford moved that the vote be retaken on each demurrer on which there had been a tie vote.

Carried.

Accordingly the vote was retaken on second subdivision of special demurrer to article 2 of impeachment as applied to article 3 of impeachment, to-wit:

2. They allege matters transpiring prior to the commencement of defendant's time of office which are not, under the Constitution and laws of Texas, can not be matters on which to base an impeachment of him and his removal from office.

The question, shall the demurrer be sustained? was decided in the negative by the following vote:

YEAS—12.

Agnew,	Kearby,
Baldwin,	Shelburne,
Crowley,	Simpson,
Douglass,	Smith,
Goss,	Swayne,
Hutchison,	Woods.

NAYS—13.

Atlee,	Lawhon,
Boren,	Lewis,
Bowser,	McKinney,
Cranford,	Presler,
Dean,	Steele,
Dickson,	Tips.
Imboden,	

ABSENT—2.

Greer,	Jester,
McComb,	Yoakum.

EXCUSED—2.

Browning,	Whitaker.
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The vote was then retaken on the third part of first subdivision of the special demurrer to article 4 of impeachment, to-wit:

"Because it affirmatively appears on the face of said article 3 that the alleged sale to C. D. Dollon of section of lands 16, section 24, section 34, section 84, in block No. 2, Houston and Texas Central railroad, Harris county, Texas, were made on the 14th of October, 1892, which was a day and time prior to the commencement of defendant's present term of office, and so far as said sales are concerned, they constitute no grounds for his impeachment and removal from the office he now holds."

The question, shall the demurrer be sustained? was decided in the affirmative (sustained) by the following vote:

YEAS—14.

Agnew.	Kearby.
Baldwin,	Shelburne,
Crowley,	Simpson,
Douglass,	Smith,
Goss.	Swayne,
Hutchison,	Woods,
Jester,	Yoakum.

NAYS—13.

Atlee,	Lawhon,
Boren,	Lewis,
Bowser,	McKinney,
Cranford,	Presler,
Dean,	Steele,
Dickson,	Tips.
Imboden,	

ABSENT—2.

Greer,	McComb.
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EXCUSED—2.

Browning,	Whitaker.
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The following were sent up:

We vote to overrule the exceptions to the charges alleging acts prior to the re-election of respondent, because we believe such acts may be considered in connection with acts committed after re-election as matter of inducement merely, tending to prove general character of the official acts of respondent.

ATLEE.
GREER.

Having voted to sustain the general demurrer we therefore vote to sustain all the special demurrers for the reason that under our view of the law

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the respondent can not be impeached under these charges.

WOODS
AGNEW,
GOSS,
SIMPSON,
SHELburne,
SMITH,
SWAYNE,
BALDWIN,
HUTCHISON,
JESTER.

On motion of Senator Cranford the court adjourned subject to the call of the Senate.

SENATE CHAMBER,
AUSTIN, TEXAS, May 1, 1893.

The High Court of Impeachment convened as per call of the Senate.

President Pro Tem Kearby presiding.

The President announced that in pursuance to resolution previously adopted he had appointed Mr. C. H. Shaw stenographer of the court, and Mr. Shaw being present administered to him the following oath:

You do solemnly swear that you will truly record and correctly transcribe such proceedings of the court as the court may require of you in trial of W. L. McGaughey, Commissioner of the General Land Office of Texas, so help you God.

The President Pro Tem made the following announcement:

In pursuance to the rules of this court and the vote heretofore taken the High Court of Impeachment makes and enters the following order to-wit:

It is ordered that the respondent's general demurrers to the articles of impeachment be, and the same are hereby overruled.

It is further ordered that all of respondent's special exceptions to said articles of impeachment be, and they are hereby overruled, except the third special exception as applied to article 4, and the special exceptions to articles 5, 6, 8 and 16, and the second and third special exceptions to articles 17, 18, 19, 20, 23 and 24, which are hereby sustained.

The President laid before the court the following communication:

AUSTIN, TEXAS, May 1, 1893.

To the Honorable Senate of the State of Texas, Sitting as a High Court of Impeachment:

Gentlemen: A very great number of the employes of this office, under instanter subpœnas, have been sum-

moned to appear as witnesses before your honorable court to testify in the matter of impeachment now pending before your honorable body. These employees are drawn indiscriminately from every division of this department, and unless some plan can be adopted by which most all of them can remain at their posts here, the work of this department of the government will virtually be suspended, not only entailing great embarrassment to the public service, but rendering it practically impossible to furnish to your honorable court, pending this impeachment, certified copies of such records as your court may from time to time demand. I would venture to suggest that if only two of the employees were required to remain away from their work at a time, that I could replace one as fast as he may be discharged, or by telephone I could notify such witness as your honorable court might want and send him at a moment's notice.

Most respectfully submitted,

ANDREW J. BAKER.

Commissioner of the General Land Office.

Senator Tips offered the following: Whereas, in the proceedings of impeachment against Hon. W. L. McGaughey, Commissioner of the General Land Office, now pending before the State Senate sitting as a High Court of Impeachment, eleven Senators voted to sustain the second subdivision of the general demurrer, and

Whereas, the State Constitution provides that in impeachment proceedings a concurrence of two-thirds of the Senators present shall be necessary to convict, and

Whereas, the above vote clearly indicates that over one-third of the Senators are convinced that the respondent can not or should not be convicted, even if all the facts alleged in the twenty-five articles of impeachment should be proven and substantiated, because they contain no impeachable matter and for other reasons stated in the said second subdivision of the general demurrer; and

Whereas, Under these circumstances a trial upon the facts alleged in the articles of impeachment, which would probably consume several weeks' time, and would necessarily prolong this session of the Legislature to that extent to no practical purpose; therefore,

Resolved, By the State Senate sitting as a High Court of Impeachment, that further proceedings in the impeachment trial of W. L. McGaughey,

Commissioner of the General Land Office, are considered by this Senate as a useless waste of time and money, and are therefore dismissed.

Lost by the following vote:

YEAS—2.

Crowley, Tips.

NAYS—19.

Agnew,	Kearby,
Baldwin,	Lawhon,
Boren,	Lewis,
Cranford,	Shelburne,
Dean,	Simpson,
Dickson,	Smith,
Douglass,	Steele,
Greer,	Woods,
Hutchison,	Yoakum.
Imboden,	

ABSENT—8.

Atlee,	McComb,
Bowser,	McKinley,
Goss,	Presler,
Jester,	Swayne.

EXCUSED—2.

Browning, Whitaker.

The President then called the case, and requested the parties to announce, whereupon Hon. T. S. Smith, for the managers, asked till to-morrow morning to announce. Senator Steele moved that the request be granted.

Refused by the following vote:

YEAS—7.

Boren,	Kearby,
Dean,	Lewis,
Dickson,	Steele.
Greer,	

NAYS—15.

Agnew,	McKinney,
Baldwin,	Shelburne,
Cranford,	Simpson,
Douglass,	Smith,
Hutchison,	Tips,
Imboden,	Woods,
Jester,	Yoakum.
Lawhon,	

ABSENT—7.

Atlee,	McComb,
Bowser,	Presler,
Crowley,	Swayne.
Goss,	

EXCUSED—2.

Browning, Whitaker.

On motion of Senator Smith the court adjourned to 3 p. m. to-day.

AFTERNOON SESSION.

The High Court of Impeachment met pursuant to adjournment.

The President directed the secretary to furnish the House with a

certified copy of the judgment of the court on the demurrers to the articles of impeachment.

The secretary returning informed the Chair that he had done as directed.

The President asked if the State was ready to announce for trial, whereupon Hon. T. S. Smith on part of managers for the House suggested that inasmuch as the court had sustained some of the demurrers to the articles of impeachment, the case was materially different from what it was at the beginning, and asked that reasonable time be given to the managers in which to consult the House as to further action.

Senator Yoakum moved that the court postpone further action till tomorrow 10 a. m.

Refused by the following vote:

YEAS—10.

Boren,	Jester,
Dean,	Kearby,
Dickson,	McKinney,
Greer,	Steele.
Hutchison,	Yoakum.

NAYS—11.

Agnew,	Shelburne,
Baldwin,	Simpson,
Cranford,	Smith,
Crowley,	Tips,
Douglass,	Woods.
Lawhon,	

ABSENT—8.

Atlee,	Lewis,
Bowser,	McComb,
Goss,	Presler,
Imboden,	Swayne.

EXCUSED—2.

Browning,	Whitaker.
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Mr. Smith, for the managers, asked whether or not the House would be allowed to present additional articles should it be deemed necessary.

The President stated that the House had the right to present additional articles, and it would rest with the court as whether or not they would be placed on file.

Thereupon Mr. Smith, on part of managers, stated that as the court refused to grant further time the managers would proceed to trial.

Hon. W. M. Walton, for the respondent, waived the reading of the articles of impeachment, and before announcing ready for trial, read the following protest, after which he announced ready for trial:

State of Texas vs. W. L. McGaughey—Impeachment.

The court having overruled the general demurrers of respondent.

1. As to the jurisdiction of the

court based on the claim that sections 1 and 2 of the Constitution of Texas, article 15, do not execute themselves, but require legislation to put them in operation, etc.

2. That no impeachable matter is alleged against him in the articles of impeachment in that therein there is no act, fact or thing, crime or offense known to the criminal laws of Texas alleged against him.

He now protests against the court to put him on trial and to the sufficiency of the matter alleged against him in the articles of impeachment, but says that he has no further reason to interpose why he should not go to trial on the facts that are alleged against him in the said articles of impeachment.

W. L. MCGAUGHEY,
In propria persona.

FAULK,
HENDERSON,
LIGHTFOOT,
WALTON,
Respondent's Counsel.

Issue being joined the prosecution introduced C. F. Winkler, who being sworn, testified as follows:

TESTIMONY OF C. F. WINKLER.

Q. State your name and residence.

A. My name is C. F. Winkler, residence, Houston, Texas.

Q. What position, if any, do you occupy in Harris county?

A. County clerk.

Q. How long have you occupied that position?

A. About two and one-half years.

Q. When were you first elected?

A. In November 1890, I believe it was.

Q. Were you re-elected in 1892, or not?

A. Yes.

Q. I will ask you if during that length of time you have had correspondence with the Land Office under the administration of W. L. McGaughey?

A. Yes.

Q. Have you at his request been receiving applications for sale of school lands in Harris county and forwarding them, after you received them, to the Land Office?

A. I don't know whether I received applications or not. I received reports of sales. That is, I have received them in some instances, where sections were detached.

Q. Have you been furnished by the Land Office with a classification and list of the school lands in Harris county?

A. I have been furnished, from time to time, corrected classifications.

Q. Has that been done at intervals during your entire term in office?

A. Yes.

Q. I will ask you, Mr. Winkler, if you have in your possession now original correspondence on the part of the Land Office to you as county clerk in regard to the notice of putting the school lands in Harris county upon the market for sale?

A. Yes.

Q. Did you or not receive any report after that from the Land Office of the sale of this school land?

A. I did.

Q. Will you please let us have the letter?

(Letter is here handed to relator's attorneys.)

Relator offers in evidence the letter. Said letter is as follows:

AUSTIN, Texas, Dec. 14, 1892.

C. F. Winkler, Esq., Houston, Texas:

DEAR SIR: This is to notify you that all unsold State school lands on the market in Harris county at this time have this day been changed from "requiring settlement" to section 22 (not requiring settlement in order to purchase). You will please make the necessary change on your list of classified lands, and oblige,

Very truly yours,

W. L. MCGAUGHEY,
Commissioner.

P. S.—Please acknowledge receipt.
Mc.

Q. When did you receive that letter?

A. On the 18th day of December, 1892.

Q. What did you do upon the receipt of the letter?

A. I acknowledged receipt of the letter.

Q. I will ask you to look at this map and state what the sections marked in red and blue are?

A. I believe that it is admitted that the sections marked in red and blue are the school sections.

Q. Do you know the location of these lands in Harris county?

A. Not all of them. Most of them are in the southwestern part of the county.

Q. What did you generally do when you would receive notice like that from the Land office; what was the custom and practice of your office?

A. I would acknowledge receipt and record the communication.

Q. Where did you record it?

A. In a book kept for that purpose.

Q. Just explain it all?

A. It was a book called the record of public school lands of Harris county.

Q. What was the purpose of recording it in that book?

A. I do not know the purpose exactly, except to comply with the instructions from the Land Office. The book was given me by my predecessor.

Q. Was it to give notice to the public if the land was on the market for sale?

A. Yes, that was the purpose of it.

Q. Prior to the reception of that letter, I will ask you whether or not these school lands, or a large portion of them, had been on sale, not requiring settlement or requiring settlement?

A. I have received at intervals statements where the classification was corrected, and some were detached and could be sold under the act of 1887.

Q. I will ask you what land the letter which you have just read, which stated that all unsold sections of school land in Harris county changed and not requiring settlement, had reference to?

A. To all unsold school land in Harris county.

Q. Do you know what portion of the county they were located in?

A. I don't know what portion of the county they were situated in.

Q. I will ask you whether that was the first notice you had gotten on the point that these sections were on the market for sale, not requiring settlement?

A. That was the first letter I got on that point. As I stated before, I received corrected classifications and marked detached, and could be sold under the act of 1887. That applied to specific sections.

Q. Were there certain sections in that county known as isolated and detached sections and some not isolated and detached?

A. I am not very familiar with the school lands in Harris county. It was the duty of one of my clerks to attend to it and I never paid much attention to it.

Q. Can you give us from your memoranda what sections prior to the reception of this letter were placed on the market not requiring settlement?

A. Section 2, certificate 579, Houston and Texas Central Railway Company.

Q. I will ask you if sections 16, 18, 20, 22 and 24, and on consecutively by

even numbers up to and including 88, of the Houston and Texas Cen ral railway lands; if they had prior to the reception of that letter been placed on the market for sale other than to actual settlers?

A. I find some of them that were not.

Q. Were any of them put on the market prior to that time? Do you find any of them on your list? I will ask you to begin on the 1st day of October, if you have it systematized, so you can do so?

A. I would not know how to get at that.

Q. I will ask you if, after the reception of the letter you just read, you received from the Land Office a report of the award of certain sections of the land in Harris county?

A. Yes.

Q. Have you that?

A. Yes.

Q. Will you please read it?

(The following statements are read to the court.)

GENERAL LAND OFFICE,
AUSTIN, TEXAS, January 5, 1893.

To the County Clerk, Harris County,
Houston, Texas.

Dear Sir: This is to notify you that the following described land has been sold in _____ county, under act of 1887, and acts amendatory thereof, approved April 8, 1889, and April 28, 1891. You will please insert name of purchaser and date of sale on the classified list of unsold lands furnished you by this office.

Part	Sec.	Blk.	Grantee	Certificate	Acres	Purchaser	Date of Sale
S½	8	...	S. F. Copeland ...	2038	640	E. R. McLean ..	Dec. 13, 1892
.....	66	2	H. & T. C. R'y Co.	137	640	David Boaz....	Dec. 14, 1892
.....	80	2	 do.....	144	640	 do.....	Dec. 14, 1892
S½ & N E¼	4	4	W. Co. R'y Co. ...	165	480	Chas. Spalding.	Dec. 16, 1892
S½	2	...	 do.....	167	320	 do.....	do.
N E¼	2	...	H. T. & B. R'y Co.	5-215	160	 do.....	do.
.....	30	2	H. & T. C. R'y Co.	119	640	E. R. McLean ..	do.
.....	48	2	 do.....	128	640	 do.....	do.
.....	68	2	 do.....	138	640	 do.....	do.
.....	32	2	 do.....	120	640	W. Thompson..	do.
.....	50	2	 do.....	129	640	F. M. Beatty ...	do.
.....	36	2	 do.....	122	640	F.P.M'Laughlin	do.
.....	46	2	 do.....	127	640	 do.....	do.
.....	60	2	 do.....	134	640	 do.....	do.
.....	70	2	 do.....	139	640	Thos. F. Taylor.	do.
.....	72	2	 do.....	150	640	 do.....	do.
.....	74	2	 do.....	45-6252	640	 do.....	do.
.....	76	2	 do.....	142	640	 do.....	do.
.....	8	...	H. T. & B. R'y Co.	5-169	640	R. C. Shelley...	Dec. 24, 1892
.....	52	2	H. & T. C. R'y Co.	130	640	W. Thompson..	Dec. 16, 1892
.....	54	2	 do.....	149	640	 do.....	do.
.....	58	2	 do.....	133	640	 do.....	do.
.....	62	2	 do.....	135	640	S. D. DeCordova	do.
.....	78	2	 do.....	143	640	 do.....	do.
.....	86	2	 do.....	147	640	 do.....	do.
.....	88	2	 do.....	45-6253	640	 do.....	do.
.....	20	2	 do.....	114	640	F. M. Beatty ...	do.
.....	22	2	 do.....	115	640	 do.....	do.
.....	28	2	 do.....	118	640	 do.....	do.

W. L. MCGAUGHEY, Commissioner of General Land Office.

Respondent objects, said objections being as follows: "We find in the report of sales the name of S. F. Copeland for 640 acres sold to E. R. McLean, December 13, 1892. This is a report of sale that is not complained of in the articles of impeachment relating to this subject matter, and for that reason respondent objects to it as being irrelevant matter and does not relate to the matters charged in the articles of impeachment, and of which we have had no notice, and ask that it be stricken out. The item ob-

jected to is section 85. Also, we are not charged in the articles of impeachment with 160 acres sold to Chas. Spaulding, nor with 480 acres charged to be sold to Chas. Spaulding, nor with 320 acres sold to Chas. Spaulding, nor with 640 acres sold to E. R. McLean. The testimony is irrelevant, immaterial and needlessly encumbers the record, and is calculated to produce confusion and injustice. It is proving matters we are not charged with.

STATEMENT BY BOARD OF MANAGERS.

"We shall offer in evidence the sales of other sections about the same time to show that the Land Commissioner recognized a marked distinction between isolated and detached sections and those not isolated and detached, and in order to do that we want to show sales by him of sections isolated and detached, and marked isolated and detached by him. To show the fact that he, the respondent, recognized and acted upon the marked distinction between those isolated and detached and those not isolated and detached. It is a circumstance showing the intent and purpose with which respondent acted.

Further statement by respondent.

"The answer to the argument of the gentlemen is very brief and satisfactory. What we complained of in our demurrers was that the relator had not alleged against us any wrongful, corrupt, or bad intent, and in the articles of impeachment they do not allege that we sold the land with a bad intent or with any intent at all, and not having alleged an intent, it is certainly in no court allowable to prove an intent when it is not alleged. On the contrary, the allegations in article No. 4 is that the Commissioner erroneously sold these lands, not willfully or corruptly, nor feloniously, and for that reason we think it is very plain that you cannot prove an intent or put in evidence to make up an intent when no intent is alleged, and we think we should keep the case clear and try the Commissioner to the fullest extent on the charges against him, and let in all

the testimony which will prove the allegations, but not go on the outside and prove other matters. In article 3 it is alleged unlawfully and knowingly, and that is all the allegation there is in that article. In article 4, which embraces the same matter, the allegation is that it was made erroneously. The testimony is not admissible as collateral matter in order to prove scienter or bad intent.

STATEMENT BY THE PRESIDENT.

Under the ruling adopted by the court it is the duty of the Chair "to make its rulings, or he may submit it to the court when a member is dissatisfied with the ruling of the Chair. The Chair is of the opinion that the objection is well taken, if the Chair understands the proposition. I understand there are several sections of land in the list, some mentioned in the articles of impeachment, and some are not. The objection is to those not mentioned in the articles. The Chair is of the opinion that the relator having set out the sales complained of that the proof should be confined to them.

STATEMENT BY RESPONDENT.

The respondent admits that he sold all the lands alleged against him in the articles of impeachment at the dates therein named subsequent to his re-election, and to the persons named in the articles of impeachment. We don't deny that we made the sales. We did make them on the dates named and to the persons named in the articles of impeachment. That goes to all of the sales that are named in the articles of impeachment that were made after his re-election.

Question by relators: What do you say to those made in October?

Answer by respondent: Those were prior to his re-election, and have been ruled out by the demurrers.

Vote of the court is called for upon the ruling of the chair.

The ruling of the Chair is sustained.

Relators offer in evidence the following paper:

"Original Classification Act of 1887."—*Public School Land, Harris County.*

Sec.	Blk.	Certificate	Original Grantee	Watered or Dry	Agricultural, Grazing or Timber	Number of Acres	Price
8		5-169	H. T. & B. R'y Co...	Dry.	Graz.	6,400	\$2 00

REMARKS.—Detached; can be sold under sec. 22, acts of 1887.

Examined and approved, as the classification and appraisement of certain

unsold public school land in Harris county, as made in this office December 23, 1892, under act of 1887, and acts amendatory thereof.

W. L. MCGAUGHEY, Commissioner.

Classified by E. M. Phelps.

GENERAL LAND OFFICE, AUSTIN, TEXAS.

I, W. L. McGaughey, Commissioner General Land Office, do hereby certify that the above is a true copy of the classification and appraisalment of certain unsold public school lands, as heretofore described.

In testimony whereof I hereunto sign my name, and cause to [SEAL.] be affixed the impress of the seal of the General Land Office, this 23d day of December, A. D. 1892.

W. L. MCGAUGHEY, Commissioner.

Respondent objects because it is not named in the articles of impeachment and is immaterial and irrelevant to the articles joined, and is merely a notice of classification.

Statement by relators:

It is offered for the purpose, which of course we expect to show and connect with other testimony, that the Commissioner of the Land Office recognized this body of lands in Harris county as land subject to sale only to actual settlers, and that those marked in red were detached sections and subject to sale to any person. It is offered as an act of his, a declaration of his, showing that he recognized and acted upon it, and the sections marked in red were subject to sale to any person. Respondent claims in his answer that all of these lands were detached and isolated. It is offered to show that he recognized a distinction and acted upon it, and that the people of Harris county also acted upon it, and we don't know of any stronger way of showing that than by his own declarations. This paper is dated December 23, 1892.

Respondent further objects:

I would state that the instrument offered now by the relators is an original classification of section 8, which is detached and can be sold under section 22 of the acts of 1887, and is an original classification and has no relevancy whatever to the lands set out in the articles of impeachment. It is not one of the sections which they claim to have been sold. If so, there is nothing to show it. So far as it appears to the court this section is yet unsold, and what

relevancy can this have to the issue here? The issue is whether or not the Land Commissioner has illegally, wrongfully and corruptly put upon the market and sold certain lands named in this bill of impeachment. In order to support that, the relators introduce this paper which is an original classification of a detached section that has nothing on earth to do with the lands here. It has no connection with the case, and never was classified until this time, and is an original classification."

The objection is sustained by the chair. A vote is taken upon the question of sustaining the chair: The ruling of the chair is sustained by a vote of 12 ayes and 10 noes, to-wit:

YEAS—12.

Agnew,	Jester,
Baldwin,	Kearby,
Crowley,	Lawhon,
Dickson,	Simpson,
Douglass,	Smith,
Hutchison,	Woods.

NAYS—10.

Boren,	Lewis,
Cranford,	McKinney,
Dean,	Steele,
Greer,	Tips,
Imboden,	Yoakum.

ABSENT—7.

Atlee,	Presler,
Bowser,	Shelburne,
Goss,	Swayne.
McComb,	

EXCUSED—2.

Browning,	Whitaker.
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Relator offers in evidence a classification as follows:

"Original Classification Act of 1887."—Public School Land, Harris County. Detached, and can be sold under sec. 22, act of 1887.

Sec.	Blk.	Certificate	Original Grantee	Watered or Dry	Agricultural, Grazing or Timber	Number of Acres	Price
2		35	W. C. R'y Co.....	Dry.....	Graz.....	640	\$2 00

REMARKS.—The certificate by virtue of which this land was located was re-located in Clay county, but location is valid for State part by reason of act

of 1885, no other location having been placed on said land, or any part thereof, prior to passage of said act, or thereafter.

Examined and approved, as the classification and appraisalment of certain unsold public school land in Harris county, as made in this office December 29, 1892, under act of 1887, and acts amendatory thereof.

Classified by E. M. Phelps.

W. L. MCGAUGHEY, Commissioner.

GENERAL LAND OFFICE, AUSTIN, TEXAS.

I, W. L. McGaughey, Commissioner General Land Office, do hereby certify that the above is a true copy of the classification and appraisalment of certain unsold public school land, as heretofore described.

[SEAL.] In testimony whereof I hereunto sign my name and cause to be affixed the impress of the seal of the General Land Office this 29th day of December, A. D. 1892.

W. L. MCGAUGHEY, Commissioner.

Respondent objects to this as to the other. It is not embraced in the articles of impeachment, is immaterial and irrelevant, and is an original classification by the Commissioner.

Statement by relators:

In classifying lands, the price must not only be placed on the land, but the fact whether it is detached and isolated or not. We say that this testimony coming from the Commissioner himself will show by the fact that he marks it detached and isolated that he recognized the distinction. It is his own act and on the map it is detached and isolated. It does show that he drew a distinction which we draw now. It is offered to show that he knew and recognized a distinction. The gist of this offense is that he willfully and knowingly violated the law.

Q. (by the Chair). Does the paper offered in evidence show the land that the Commissioner is charged with illegally selling?

A. (by relator). No; it is offered to show the construction which he placed on the act of 1887.

Q. (by Chair). Have you any testimony to go to show that he classified other sections as non-isolated?

A. (by relator). Yes.

Statement by respondent's counsel:

The instrument which the relators offer they do not deny being a legal, fair, straightforward open and shut document. There is no question even hinted at by the prosecution that these sections in that paper named were illegally classed as isolated and detached sections. They don't claim in the articles of impeachment that these sections were illegally classified or illegally sold. Relator proposes to offer these documents for the purpose as he says, what? It seems to me that the question asked by the court is material and pertinent. If he has testimony on the other question, that is the testimony for him to introduce. He might just as well introduce all of

the official acts of the Commissioner. They don't claim that these lands have been sold or wrongfully classified at all, and the testimony is irrelevant.

Statement by the Chair:

The Chair finds upon examination that special demurrers have been sustained to these articles of impeachment which allege that the Land Commissioner wrongfully sold the land as detached. Section three charges that the sales were made illegally and wrongfully. These documents are offered to show that the Commissioner knew the distinction between isolated and not isolated land. The court having found in its findings on the demurrers that the question of isolated and not isolated forms no impeachable matter, and the court holds that this objection is well taken, and the objection is sustained. The Chair holds that the court having held the special exceptions good to those articles that if the relator proves it, it is no offense, as the special demurrers to this part of the articles having been sustained. The court holds that this testimony is not admissible, because the demurrers have been sustained to some of the articles of impeachment which allege that he sold sections not isolated and detached, and that if he did so it is not impeachable matter.

Relator states:

We offer this evidence to show that respondent knew what the law was, not that he sold them but that he had classified them differently.

Statement by Chair:

In section 3 of the articles of impeachment it is charged that the lands were illegally and unlawfully sold. Now, the proof offered is to show that they were unlawfully sold because they were not isolated and detached, and that the Commissioner recognized the difference between those isolated and detached and those not, and that he sold those sections contrary to that act. Now, the court has ruled

whether it was unlawful to sell or not under that article.

Statement of relator's counsel:

We charge that these other sections were unlawfully and illegally sold, and in order to prove that we want to show that he knew how to sell and classify the land, and that he did classify the others, and that he classified them differently from what he classifies them now.

Statement by the Chair:

The Chair will state that it was laboring under the impression that the demurrers to articles 4, 5 and 6 had been sustained. Upon examination of the demurrers, the Chair stands corrected, and in article 4 the action upon the demurrer leaves a portion of said article standing, and the demurrer was only sustained so far as it related to the sales made anterior to the last election. The Chair will change its ruling and overrule the objection.

Testimony of Witness Winkler, resumed:

Q. Mr. Winkler, point out the sections on the map referred to in the classifications you have.

(Witness here points out the sections as read out from the documents, classifications introduced in evidence. Section 8 is marked in red. Witness next points out section 2 on the map. section 2 is colored red on the map.)

Relator here offers in evidence the following document:

AUSTIN, Texas, Jan. 26, 1892.

C. F. Winkler, Esq., Houston, Texas:

Dear Sir: You will please change the certificate number of section 2, Texas Trunk Railway Company, Harris county, now on the market as dry agricultural, 347 3-10 acres, at \$2 per acre, so as to make said certificate number read 398 instead of 397, and also mark said tract "detached" on your list. Be kind enough to attend to this at once and notify us by return mail that you have done so. The four pieces sent you 21st instant, which were filed by you on the 22d, are to be marked as detached. You will notice section 22, marked on the sheet sent you. Three of the pieces had been on

the market before and were simply changed to detached by said list.

Respectfully,

W. L. MCGAUGHEY,
Commissioner.

Q. I will ask you whether or not all of the school lands in Harris county prior to the reception of this letter were for sale to any purchaser who might apply, except a corporation?

A. They were not marked detached on my records.

Q. Was all of the unsold school land in Harris county for sale to anybody?

A. No; not to any one, but only to actual settlers.

Q. State to the court the difference between those for sale to actual settlers and those not for sale to actual settlers?

A. I don't know that I know the difference.

Q. How did the Commissioner distinguish them to you of those for sale to actual settlers and those not for sale to actual settlers?

(Respondent here objects to this witness repeating the letter or any written communications, as they speak for themselves.)

Q. Explain what you mean by detached sections. Were detached sections subject to sale to any person?

A. Yes

Q. If they were not detached, who only could buy them?

A. Only actual settlers.

Q. State whether or not the actual settlement had to be prior to the purchase, or whether the purchase could be made and the party afterwards settle? State whether or not the purchaser had to settle prior to the purchase in order for the Commissioner to award him the land, or whether he could have it awarded to him and then settle?

A. He had to settle prior, as I understood it, although I have never had any direct applications in my office for purchase.

Relator offers in evidence the following paper:

Corrected Classification and Appraisement.—Public School Land, Harris County.

Sec.	Blk.	Certificate	Original Grantee	Watered or Dry	Agricultural, Grazing or Timber	Number of Acres	Price
2		597	H. T. & B. Ry Co...	Dry.	Graz.	640	\$2 00

REMARKS.—Detached: can be sold under sec. 22, act approved April 1, 1887. Correction in appraisement is made on county surveyor's certificate.

3—Ct. Jour.

Examined and approved, as the classification and appraisal of certain unsold common school land in Harris county, as now corrected in this office, February 28, 1893.

W. L. MCGAUGHEY, Commissioner.

Corrected by E. M. Phelps.

GENERAL LAND OFFICE, AUSTIN, TEXAS.

I, W. L. McGaughey, Commissioner General Land Office, do hereby certify that the above is a true copy of the corrected classification and appraisal of certain unsold common school land, as made in this office.

In testimony whereof I hereunto sign my name and cause to be
[SEAL.] affixed the impress of the seal of the General Land Office this 28th day of February, A. D. 1893.

W. L. MCGAUGHEY, Commissioner.

Q. What was the first notice you received that these sections in Harris county that had been on sale only to actual settlers were on sale to any person?

A. I do not know, sir.

Q. Was that letter of December 14, which you have read here, the first notice you had received?

A. I could not tell unless I examined the correspondence.

Q. Have you examined the correspondence?

A. No.

Respondent objects, because the question of notice has been eliminated from the case by striking out article 6, and the testimony is irrelevant.

Statement by relator's counsel:

It is offered as an element in proving that it was contrary to law and for the purposes shown that this was the first notice, and that these lands were sold before they were put upon the market, and we expect from the evidence to show that lands were not put upon the market until the county clerk had received the notice and his answer returned, and we expect to show that these lands were sold before they were put upon the market.

Statement by respondent's counsel:

The act itself is contrary to law unless it is in accordance with law, and now relator says that he offers it as an element of its unlawfulness, and the court, in passing on the demurrers to article 6, have excluded it and held that it has no business in here, and notwithstanding the ruling of the court in striking it out, yet the gentleman propose to introduce the question nevertheless. It comes directly under article 6, and now he seeks to get it in.

Statement by the chair:

The exception was sustained to article 6, and the Chair is of the opinion that the objection is well taken, and the objection is sustained.

Q. (to witness): Do you know anything actually about these lands, or is all you know what you see upon the paper?

A. I know where they are located.

Q. Have you ever been on them?

A. On some of them.

Q. Which lands have you been on?

A. I presume I have been over all of them, as far as that is concerned. I have been all over the county.

CROSS-EXAMINATION.

Q. Have you the classification of all of these lands?

A. Yes, I have the record of them.

Q. Where is your record?

A. I've not got it with me.

Q. Could you state from memory how they are classified?

A. No, I could not.

Q. Then, what you know about these land transactions all come up in those papers that have been sent to you, as county clerk, to register, and that is all you know about it, is it not?

A. Yes.

Q. Who attended to these matters in regard to these lands, yourself or your deputy?

A. My deputy.

Q. In truth and in fact, you know nothing about them whatever except what you see on these papers?

A. Yes.

Q. How long had these lands been on the market for sale? Had they not been there for sale some eight or ten years?

A. I do not know.

Q. Don't you know that they had been there for sale for a long time without purchasers?

A. Yes, they had been on the market for some time without purchasers.

J. W. Davis being sworn, testified as follows:

TESTIMONY OF J. W. DAVIS.

Q. What is your name?

A. J. W. Davis.

Q. Where do you reside?

A. In Houston, Texas.

Q. How long have you lived in that section of the country?

A. I was born there.

Q. I will ask you if you ever had any connection with the Land Office.

or land department of the Land Office of Texas with reference to the classification of school lands in Harris and Liberty counties?

A. Yes.

Q. What year was that in?

A. I believe it was in 1887. I have forgotten.

Q. Who was Commissioner at the time?

A. R. M. Hall.

Q. State to the court whether or not you went upon the lands, and whether or not you have been upon them and are familiar with the lands in those counties?

A. I classified them according to my knowledge of the country. I have been in the cattle business in that country for a great many years, and I know the country without going on the land. I had not been on all the land.

Q. What kind of land is it in Harris and Liberty counties?

A. On the east side of the river in Liberty county it is rather a sandy loam and part of it is black land; on the west side of the river it is black land south of the railroad.

Q. What kind of land is it in the southwestern portion of Harris county?

A. Black loam land.

Q. You don't remember what year it was you classified it do you?

A. No, but I believe it was in 1887.

Q. I will ask you whether or not you were familiar with the lands in Liberty county also?

A. Yes; I reckon I know every section of land in Liberty county.

Q. Do you know whether or not the State school lands in those counties had been upon the market—that is, Harris and Liberty counties—ever since you classified them?

A. I know they were put upon the market a good many years ago.

Q. For sale to any person, or to actual settlers only?

A. To any person having the right to purchase seven sections.

Q. When was that?

A. That was possibly in 1881. I think that was under the act of 1879.

Q. How about since the act of 1887; have they been upon the market for sale to any person, and if so, what sections have been and what sections have not been?

A. I don't know particularly about that. I have not had occasion to buy any until last year. I bought a section of land that was classified as isolated and detached.

Q. Was there any other land adjoining it?

A. No, sir; no other school land.

Q. What do you mean by isolated and detached sections of school land?

A. I mean isolated and detached sections, as I consider it, to be sections that do not join any other school lands. Sections that did join school land I would not call isolated and detached.

Q. What would you denominate section 2?

A. I would call it isolated and detached.

Q. How about sections marked in blue on the map?

A. Well, they look to me like they join, and I would say they were not isolated and detached.

Q. Were these lands put on the market soon after your classification of them?

A. I don't remember.

Q. I will ask you to state, in classification of lands that were for sale in Harris and Liberty counties, was there any difference between those sold to actual settlers and those sold to any persons except corporations.

A. The only lands I recognized for sale to any body were isolated and detached lands, and those not isolated and detached were for sale only to actual settlers. I bought section 40, Texas Central railway certificate, in Liberty county.

Q. That had no other school land adjoining it, did it?

A. No.

Q. When did you buy that?

A. I think it was the early part of last year, or a little over a year ago. I bought it since McGaughey was Commissioner.

Q. Did you buy it as an actual settler?

A. No.

Q. Did you have correspondence about the purchase?

A. Yes.

Q. Have you the correspondence?

A. No. I gave it to the House and Senate committee, when I was first called up here. Senator McComb took the correspondence.

Court adjourned till Tuesday, May 2, at 9 a. m.

SENATE CHAMBER, AUSTIN, TEXAS, May 2, 1893.

The High Court of Impeachment convened pursuant to adjournment.

Lieutenant-Governor Crane presiding.

There being no quorum, Senator Imboden moved that the Court of Im-

peachment adjourn, subject to call of the Senate.

Lost by the following vote.

YEAS—9.

Agnew,	Douglass,
Baldwin,	Imboden,
Boren,	Jester,
Dean,	Tips.
Dickson,	

NAYS—10.

Greer,	Shelburne,
Hutchison,	Simpson,
Kearby,	Smith,
Lawhon,	oods,
McKinney,	Yoakuni.

ABSENT—10.

Atlee,	Lewis,
Bowser,	McComb,
Cranford,	Presler,
Crowley,	Steele,
Goss,	Swayne.

EXCUSED—2.

Browning, Whitaker.

Quorum being announced, the court proceeded, with J. W. Davis, witness for the State, on the stand.

Relator offers in evidence map of Liberty county.

Respondent objects to the map as it is not an authenticated map of Liberty or Harris county or any county in which the lands are situated. It seems to be a conglomerated map of several counties thrown together, in which there is no controversy.

By relator's counsel: It has the seal and certificate of the Land Office on it.

By respondent's counsel: It seems to be a mixed map and has certificate of Mr. Bramlette as chief clerk, made April 12, 1893, and has attached this certificate:

"I, W. C. Walsh, Commissioner of the General Land Office, do certify that the above map of Chambers county is a true and correct copy of the map now in use in my office."

I don't recognize any Commissioner of the General Land Office of that name at this time. The court judicially knows the heads of the political departments of the State. It judicially knows the fact that that is not the Commissioner.

These certificates appear on these different maps. It seems to be a kind of mixed map. A map of Chambers county, a map of Jefferson county, and contains, I suppose, a part of Liberty county. I can't see the object of introducing this mixed map. I take it for granted that the portion, that is of Liberty county, is a correct map. I don't know that. The certificate of the chief clerk here, made April 12, 1893, I presume, is

correct. I take it for granted and am willing to admit that these maps are correct maps of those different counties, but I cannot see the object of throwing these together and bringing in questions as to Jefferson and Chambers counties about which there is no controversy in this case, as it is irrelevant, and we object. So far as Liberty county map is concerned, we do not object.

Statement by relator's counsel: The charge is that the Commissioner sold school lands in Liberty county.

Statement by relator: The charge is that the Commissioner sold school lands in Liberty county. We expect to show by that map their connection, and that the school lands charged to have been illegally sold in Liberty county were a part of a large mass of lands extending into Jefferson and Chambers counties, making in the aggregate about 130 sections of land. We think these facts are material to inform the court as to the situation of the lands alleged to have been sold. It matters not whether they were attached to lands in Liberty county or not, or extended over into other counties.

Respondent states that they withdraw their objections.

Mr. Davis, witness for relator, recalled, testified:

Q. Mr. Davis you stated that you were acquainted with those lands, are you acquainted with them now?

A. Well, I am acquainted with them. I am acquainted with the geography of the country generally.

Q. Are these school lands in Harris and Liberty counties in a body settled or not?

A. Some of them are settled a little.

Q. I mean those that have been recently sold; since last November.

A. I have not been over that section of the country lately. On the west side of the Trinity river they were not settled up by the parties who bought the land?

Q. Have they since been settled up?

A. They have since been settled up by actual settlers. That is being done right along now. I am speaking of the land in controversy here. They are disregarding the sale and settling on the land.

Q. Are you acquainted with the market value of land in that neighborhood?

A. On the west side of the river I own some land.

Q. What were those lands reasonably worth in the market in December and January?

A. Well, I don't know of any being sold particularly. There has been sev-

eral tracts of land sold out there but not recently.

Q. I will ask you to state if there has been anything last fall or this winter west of the river that caused the lands to come into special demand, and if so what fact?

A. Well we have an unusual demand for land there on account of the rice industry, and the lands are low, flat lands that we did not consider valuable at all, except now and then a ridge; and the low lands have become more valuable on account of the invention of a ditching machine that has rendered it practicable to ditch these lands at a small cost so that they have become valuable. They are rich. The reason they were not valuable before was because there was no way of ditching them without too great expense.

Q. What are the value of those lands west of the river?

A. Those lands in the neighborhood of my ranch I would consider worth \$8 or \$10 an acre. They are black loam lands and will make a bale of cotton to the acre. We made a bale of cotton to the acre last year.

Q. At the time they were sold were they bought by actual settlers?

A. Two sections of land that was the subject of the recent correspondence between the Commissioner and myself was sold to a man by the name of Wilgus, who lives in Houston, and was not an actual settler.

Q. At the time these lands were sold did you know whether any parties were moving on the lands for the purpose of settlement in order to buy?

A. Yes.

Q. Who were they?

A. Mr. Thompson and Mr. Marshall. They wanted to purchase sections 22 and 24. I had pointed out 22 and 24 to the two young gentlemen, one from Kentucky and the other from North Carolina. One was named W. G. Thompson and the other was R. W. Marshall.

Q. Are they here?

A. Yes. I suggested to them that they should take these lands up and improve them and they would be valuable. They went to the county clerk of Liberty county, Captain Cameron, and made an application for those lands. The county clerk, however, told them that he could not receive their applications until they could make an affidavit that they were actual settlers on those lands. They went to work to hauling the lumber out on the lands. They got a part of the lumber hauled out and the saw-mill got burned up. In the meantime

they were notified that the lands had been sold. This letter I have in my hands, is a notification that I got.

(Witness here reads letter to the court, which is as follows):

AUSTIN, TEXAS, February 15, 1893.

J. W. Davis, Esq., Houston, Texas:

DEAR SIR: In reply to yours of the 7th instant, I can only state that your lease No. 4162, for 3010 acres of land in Liberty county, was forfeited for failure to pay annual rental, and since the forfeiture the lands have been placed on the market under section 22, act of 1887, not requiring settlement, and sold. This department was not advised, by application or otherwise, that actual settlers wanted to buy the lands as actual settlers, and when they do the law requires them to file the application, swearing they have already settled on the land for a home. The lease has been legally forfeited and the land sold, and nothing further can be done.

Respectfully,

W. L. MCGAUGHEY,
Commissioner.

Q. Can you point out those sections on this map?

A. Yes, these are the two sections, 22 and 24, Gulf, Colorado and Santa Fe certificate.

Q. Is section 38 settled; is anybody on that?

A. That has been filed on by a man by the name of Humphreys. No one is living on it that I know of. It was sold at the time these two young gentlemen filed on theirs. Section 40 is the isolated section that I bought. Three sections were sold to Frank Humphreys and he has been living on it a year. Sections 22 and 24 adjoin, and they were the two sections that these two young gentlemen made application for purchase of.

Q. Do you know whether their applications were forwarded to the Land Office or not?

A. No, I don't know that fact. It was recently forwarded to the Land Office again.

Q. Who bought those two sections, Nos. 22 and 24?

A. A man by the name of Wilgus. I think he lives in Houston.

Q. What is his business?

A. I don't know. I understand he is a speculator in lands, but that is only hearsay.

Q. Were these sections, 22 and 24, settled on when Wilgus bought them?

A. No. There are houses being constructed on them now.

Q. When were you out there last?

A. I was out there three or four weeks ago.

Q. Did the parties that settled on the land buy it from Wilgus?

A. No, they settled on them as school lands, claiming the lands as having made application for them as actual settlers.

Q. Who are those parties?

A. Thompson and Marshall. They disregarded the sale of the Commissioner entirely, as many others have done in that section of the country.

CROSS-EXAMINATION.

Q. Mr. Davis, what block of land is sections 22 and 24 in; are they in any railroad block?

A. That land was settled by virtue of certificates issued to the Gulf, Colorado and Santa Fe railroad.

Statement by respondent's counsel: Respondent asks that this entire testimony in regard to sections 22 and 24 be stricken out, for the reason that in the articles of impeachment there is nothing in regard to the sale of lands in the Gulf, Colorado and Santa Fe block.

The question we are called upon to meet is in regard to the lands in the Houston and Texas Central and Texas and New Orleans blocks. These lands are in the southeastern part of the county. Here is a tract of land now that they propose to introduce testimony about, which lies in the southwestern part of the county and is not embraced in the Houston and Texas Central and Texas and New Orleans blocks of surveys, but in the Gulf, Colorado and Santa Fe block, in a different part of the county. This testimony is irrelevant and should be excluded. That was the rule adopted by the court on yesterday.

Statement by relator's counsel: We know these two sections are not mentioned in the indictment, but this is part of the same transaction. It occurs within the same scope of time as that mentioned in the indictment, and we think it material for the purpose of throwing light on other transactions, and we offer it for the purpose of giving the court the benefit of the dealings in these school lands so the court will have all the light possible. It is material for that purpose. It is to show also the demand for the lands and location and situation of them.

Reply by respondent's counsel: It was our fault, perhaps, that we did not object to this testimony when it was sought to be drawn out, but, apprehending that the managers of the

House would move in this matter in accordance with the ruling of the Chair, we were not as vigilant in watching for infractions of the rule as we would have been and as we will be hereafter. This testimony comes directly under the rule laid down by the Chair on last evening, from which an appeal was taken to the court and the ruling of the court was sustained. It is a matter not embraced in the articles of impeachment. It is a matter to answer which the respondent has not been called here. While we are willing to throw all the light that is possible into the minds of this court, yet we desire it shall be legal light, legitimate light, light recognized by the law, and light that the court ought to receive, light that will help the court to come to a proper conclusion; and not false lights that will lead the court to false and improper conclusions. We think this testimony should not have been tendered, but as it has been tendered and let in, we think under the ruling of the court it ought to be ruled out.

Statement by relator's counsel: We are willing for them to be as vigilant in the future as they desire. We are not particular about the vigilance. We do not want to be placed in the light of putting in evidence that should not be brought in. These sales and transactions have been since the re-election and during the present term of the Commissioner.

Statement by respondent's counsel: We would be very glad if the ruling of the Chair would be observed. The President laid down the rule with reference to this subject matter in and about the three certificates or reports of sale that were first offered in evidence by the gentlemen on the other side. There was one sale to Spaulding and two or three sales to E. R. McLean, that were not mentioned in the articles of impeachment. Our objection was based upon the fact that these sales were not embraced in the articles of impeachment, and was not legitimate matter to be brought before the court. The court ruled the Copeland and McLean sales out, notwithstanding they were made at the same time.

Some member of the court desired a vote upon it, and the ruling of the Chair was sustained by a vote of 12 to 10, and thereafter we looked upon it that the rule thus laid down would be the rule of the court. We think it is a clear infraction of the rule as laid down by the President to bring this testimony in. Of course the court has

the right to change its opinion, but until the court does change its opinion we claim that the rule as laid down by the President must be observed.

Statement by the Chair: This inquiry has proceeded to sections not embraced in the articles of impeachment, and the Chair is of the opinion that yesterday's ruling is correct, and that sales not mentioned should not be gone into.

Statement by a member of the court: Believing that this testimony should be heard, and for the purpose of giving the construction of the Commissioner upon this law, I request a vote by the court on the motion made by respondent's counsel to exclude this testimony relating to certain sales made by the Land Commissioner and not embraced by the articles of impeachment.

Vote was taken upon the question with the following result:

YEAS—11.

Agnew,	Lawhon,
Baldwin,	Sh-lburne,
Crowley,	Simpson,
Hutchison,	Smith,
Jester,	Woods.
Kearby,	

NAYS—12.

Boren,	Imboden,
Cranford,	McComb,
Dean,	McKinney,
Dickson,	Steele,
Douglass,	Tips,
Greer,	Yoakum.

ABSENT—6.

Atlee,	Lewis,
Bowser,	Presler,
Goss,	Swayne.

EXCUSED—2.

Browning,	Whitaker.
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Respondent's counsel asks, if the court please, to have the official map of Liberty and Harris counties—in the Land Office—which can only be brought away from the Land Office by an order of the court, that the court grant them an order for these official maps to be brought into court. We ask for an order that they be brought over here, and also the sketch map of Liberty county.

Said request is granted.

Q. (By relator): Mr. Davis, these lands that were not isolated and detached, in Harris and Liberty counties, had parties been buying these lands who were not actual settlers in December and January last, or had they been on the market to actual settlers only?

A. They had been on the market only to actual settlers.

Q. What do you mean by isolated and detached lands?

A. I explained that yesterday evening.

Q. I will ask you if it was known, so far as you were able to ascertain, and if you knew down there, that these lands could be bought except by actual settlers before they were sold?

A. No.

Q. When was it ascertained down there that these lands could be purchased by other than actual settlers.

A. Well, it was not ascertained by me until after they were all sold.

CROSS-EXAMINATION.

Q. I understand you to say that you had sections 22 and 24 in your pasture?

A. Yes.

Q. You had had them leased, had you?

A. Yes.

Q. What time did your lease begin and what time did it end?

A. I had a lease for five years. I don't remember when it begins or ends. My first letter from the Commissioner, which is here, I think will show. I only made one payment. I made a lease for five years; I paid for one year.

Q. Your lease had run out some six months before the sale was made, had it not?

A. Yes. The payment was due for a long time, and when the payment was not made the lease was forfeited.

Q. Your lease has been forfeited since April 1, 1892, has it not?

A. Yes.

Q. Your lease had been forfeited for over a year, had it not?

A. Yes.

Q. You had no claim on the land, had you?

A. I did not know but that I might have a claim and I got Mr. McLean to see if I had. The Commissioner decided that I had no claim on it.

Q. These two sections you say were in your pasture.

A. Yes.

Q. I will ask you if these two young men made any written application for these lands to the clerk of Liberty county?

A. You would have to prove that by them. They advised me that they had made application.

Q. You don't know of your own knowledge that they made application, do you?

A. Only from what they told me. The county clerk told me that one of them had made application for it.

Q. Which one?

A. I don't remember.

Q. Who is the county clerk of Liberty county?

A. Captain E. F. Cameron. He told me one had made application. He told me they would have to make settlement on this land and make an affidavit that they were actual settlers on the land before he could receive the application.

Q. Had they settled on the land?

A. They had not made the settlement.

Q. When was that?

A. I think that was last June or July.

Q. You say these two young men went there and made a verbal application for this land, and you say they had not settled on the land.

A. Cameron said they would have to build on the land and be actual settlers before he could receive the application.

Q. Had they built on it when they made their application?

A. No.

Q. Had they cultivated any part of it?

A. No.

Q. Then they had done nothing toward building on the land at that time?

A. No.

Q. In speaking of the value of these two sections and the character of the land, I will ask you if you were not an agent of the land office at one time for classifying and valuing this land?

A. Yes.

Q. Who appointed you?

A. R. M. Hall.

Q. Did you act as such under his authority?

A. Yes.

Q. Did you make an official classification of these lands?

A. I think I did.

Q. Will you please examine this paper and see if it is a correct classification as you made it?

A. Yes.

Q. You see sections 22 and 24, Gult, Colorado and Santa Fe, there, do you not?

A. Yes.

Q. Please read that classification?

A. Grass is ordinarily good; no timber, no water. Soil is not rich but could be cultivated with considerable drainage with good rains.

Q. What price did you place on the lands?

A. I placed the lowest minimum price I could put on it.

Q. What was that?

A. Two dollars per acre.

Q. Have you changed that classification?

A. I have never been called on to answer that classification.

Q. What time did you make that classification?

A. I think it was in 1887; I was well acquainted with these lands.

Q. You say you knew the land both in Liberty and Harris counties?

A. Well, I have been over the country and am familiar with it.

Q. This is a correct description of the land, is it?

A. It is not a description of the land now, however. There have been some changes since then.

Q. In regard to these other lands, there has been no changes in regard to the soil, has there?

A. Well, there has been a considerable change in our ideas of the soil in that country.

Q. There has been no change in the actual soil itself, has there?

A. I don't know, except that when you drain land, you get out the sour from the land.

Q. Do you change the soil itself?

A. Only as all drains will change soil.

Q. In regard to these lands of the Texas and New Orleans block, in this county, these two sections you say are on the west side of the Trinity river, that is sections 22 and 24?

A. Yes.

Q. I will ask you if sections 32, 34, 36 and 30, in the Texas and New Orleans block are correctly classified? Read your classification.

A. When these classifications were made I had the assistance of the surveyor of each county with me to help me classify these lands, and this is my knowledge of the country together with theirs. I believe the surveyor at that time was Major Dodd possibly it may have been Mr. Minter; but in each county I employed the assistance of the county surveyor. These lands in all that scope of country were classified in a short time by my knowledge of the country with the assistance of the surveyors.

Q. Read the classification of 32.

A. This is a section of the country near Jim White's pasture. Soil black and sticky, suitable for grazing only; no grass. Water at twenty feet. Water at twenty feet means if you dig a well you will get water at twenty feet.

Q. What value did you place on it?

A. I suppose \$2.

Q. The next one that is marked, what is that?

A. It is the same. They are all the same in that survey.

Q. Turning to those made under the Houston and Texas Central survey, in the same county, start at section 4 to section 20 inclusive, even numbers, are they not all classed alike? At what price did you fix them?

A. Two dollars.

Q. I will ask you in fixing that price if you made any other report to the Commissioner of the Land Office in regard to this value.

A. I fixed it at \$2 per acre because that was the minimum price at which I could have fixed it, but I don't know that it is all recorded in the Land Office, but I either wrote or placed on my report that I considered those lands too high and way beyond their value, and that they were not worth \$2 an acre, and I believe I reported them worth 50 cents per acre on an average.

Q. Was that your valuation?

A. At that time, yes. That embraced the entire section of country from the Sabine to the Brazos river. I only placed the valuation at \$2 per acre, because that was the minimum, and I reported that it was not worth over 50 cents per acre. They were a few sections that were watered sections and I put their value at \$3. I believe that was the minimum on the watered lands.

Q. What was the date of that report?

A. This report was dated August 24, 1887.

Q. How long did you continue in your work as classifier?

A. It must have been four or five months; I don't know how long; I don't know exactly how long.

Q. In speaking of these two sections that the young men wanted, and you advised them to enter, I will ask you if you made any communication yourself to the General Land Office in regard to it until after these sales were made?

A. No.

Q. Mr. Davis, is that a correct map of the surveys in Liberty county?

A. I am not familiar enough with those surveys to tell you; it looks like the map is all right.

Q. Mr. Davis, you speak about a ditching machine that has increased the value of lands?

A. Yes.

Q. How long has that machine been

in general use there, so as to give an enhancement in the value of the land?

A. The first work I have seen of this ditching machine was just about a year ago.

Q. Was the working of it generally known at that time?

A. No. It was invented by a man by the name of Stacy. He came down and bought a marsh that was hardly fit to live on with water on it. It was a black land marsh. He ditched it and made the prettiest little farm you ever saw. Before that time it was a perfect marsh. He raised a fine crop of rice on it last year. The machine cuts a ditch three feet wide at the top and twenty inches wide at the bottom. It makes a levee on one side, and it is practicable to cut a mile of ditch with that machine for less than three dollars.

Q. You say that has been in general use only a very short time?

A. It is not in general use yet. He can't supply the demand. He is manufacturing them in Iowa now.

Q. How long have they been on general sale here?

A. They are not yet on general sale here. The demand can not be supplied.

Q. Did you communicate that fact to the General Land Office, or do you know of any one else that did by reason of that fact?

A. No.

Q. You know of no notice that the Land Commissioner had of that fact?

A. No.

Q. This classification that was made was made for the official use of the Land Office, was it?

A. Yes.

Q. The Land Office generally went by the classifications made, did they not?

A. Yes. I was employed by the Land Office to make the classifications for that purpose.

Q. You spoke yesterday about some classifications made of some lands put on the market in 1881 under the seven section law, do you know what they were put on then at?

A. Yes; \$1 per acre.

Q. When was that?

A. I think it was in 1881.

Q. These lands were held on the market a number of years at \$1 an acre under the seven section act, were they not?

A. Yes, I think so.

Q. They were not sold were they?

A. A great many of them were sold; they were forfeited back to the State.

Q. Do you remember how many

were sold, under that law, that went back to the State?

A. I don't know how many, but there were a great many though.

Q. Of those lands, Mr. Davis, how many of them were taken up by actual settlers and homes made upon them, what proportion?

A. I don't know of a single section.

RE-DIRECT EXAMINATION.

Q. State whether or not it was a notorious fact down there, publicly discussed, and also in the press, as to the increase in the value and also the increased demand for these lands along in last December and January?

A. You know the development of this rice industry and the pear industry, the fruit and vegetable and strawberry industry near Elgin and Hitchcock, has made all of us think we had an Elgin and Hitchcock and our lands have gone up considerably in the last year.

Q. Was that a fact universally known in that section of country?

A. Yes.

Q. It was a matter easily ascertained by ordinary inquiry, was it not?

A. Yes.

TESTIMONY OF CAPTAIN B. F. CAMERON.

Captain B. F. Cameron, witness for relator, having been duly sworn testified as follows:

Q. You are county clerk of Liberty county, are you?

A. I am.

Q. How long have you been county clerk?

A. Nineteen years. I am also district clerk.

Q. State whether or not you are familiar with school lands situated in that county, their general location and the character of the land?

A. Yes, I am.

Q. How long have the public free school lands in Liberty county been upon the market to others than actual settlers?

A. Since January the 23d, 1893.

Q. How did you learn they were upon the market upon that date?

A. By letter from the Commissioner of the General Land Office.

Q. What has been the practice of the Commissioner with respect to notification of school land matters in your county?

A. I have had no communication from the present Commissioner.

Q. What do you do when a party

desires to purchase school lands in your county?

A. My duty is to receive applications for purchase when made.

Q. What with respect to notifications from the Land Office of the receipt by them of applications to purchase, and also as to what lands and prices they are placed on the market at?

A. They notify me when they are sold, and I note it on the classification book.

Q. Do they notify you when sold, or that they are on the market before sold?

A. I don't know.

Q. Did you receive a notification from the office about the 23rd of January, 1893, that certain lands were put on the market to others than actual settlers?

A. I did.

Q. Was that the first notification of that fact you had received?

A. That was the only one.

Q. Up to that time to whom were those lands reserved for sale?

A. Only to actual settlers where they were attached.

Q. In this list of school land sent you on the 23d of January, were the lands attached?

A. It says all lands; it is a general order.

Q. You say you were familiar with the location and surroundings of the school lands in your county; were there at that time any lands in your county that were attached?

A. Yes.

Q. In the largest body, about how many sections?

A. I don't know; it is in the southeastern part of the county.

Q. Are those the sections that join Jefferson and Chambers counties?

A. Yes.

Q. The mass of sections extend into that county, do they not?

A. I can only tell from the map.

Q. How did you get the notice from the Land Office?

A. By mail.

Q. Have you the notice with you?

A. Yes.

Q. Let us see it, please.

(Witness here produces letter.)

Relator offers letter in evidence and same is read to the court.

Said letter is as follows:

AUSTIN TEXAS, Jan. 21, 1893.

B. F. Cameron, Esq., County Clerk, Liberty, Texas:

Dear Sir: This is to notify you that all the lands in Liberty county were yesterday placed on the market under

section 22, act of 1887, which does not require settlement and occupancy to purchase. Please acknowledge receipt of this notice.

Respectfully,

W. L. MCGAUGHEY,
Commissioner.

Q. What did you do with that notice with respect to recording it?

A. I don't think I recorded it.

Q. Is it not your duty to record notifications of that character?

A. I don't think it is under the law. I don't see any law for recording it. I just filed it.

Q. Was it subject to public inspection?

A. I kept it there for public inspection.

Q. Up to the receipt of that notice, did you know that these lands were offered for sale to any others than actual settlers on them?

A. No.

Q. Was it known in your county that they were offered for sale, or were to be offered for sale to others than actual settlers?

A. No.

Q. Would there have been a demand for those lands in your county if it had been known that they would have been sold to others than actual settlers?

A. I expect so.

Q. Was there a demand after the notice was known?

A. There was some demand after the notice was known.

Q. What did you do when you received the letter?

A. I acknowledged receipt of the notice by mail.

Q. Did any person appear there after the receipt of the notice or about the time it was received?

A. I think I got it on Sunday. A gentleman appeared on Monday morning about the time I filed it. He introduced himself to me as Mr. Friedenhaus of Austin.

Q. Have you seen him since?

A. I have seen him since I have been here.

Q. Do you know what his business is?

A. I have heard that he is a land man.

Q. For what purpose did he come to your office that morning?

A. He said he wanted a certified copy of that order. He told me he wanted me to file it at once, and give him a certified copy of it. I did so.

Q. What did he say he wanted with it?

A. I don't remember.

Q. Did he tell you he had bought any of the lands?

A. I don't think he did.

Q. Did you see him there after that?

A. I did not see him any more after I gave him the copy.

Q. What did he say to you?

A. He did not say much. He did not talk a great deal.

Q. Did he tell you anything about those lands out there?

A. He knew they were on the market.

Q. Did he tell you anything about a number of persons having gone into a combination or company to buy them?

A. No; I don't remember if I asked him if there was any unsold. I told him if there was any left we wanted some, and I said "I believe I will hold the notice until the boys at home get some."

Q. Did you telegraph some applications?

A. No; some of my friends did—I have been told they did.

Q. Give us the names of those parties.

A. I think Neilan and Raborn.

Respondent objects to matters of hearsay being introduced.

Relator insists that the testimony is legitimate.

Question is withdrawn.

Q. State whether or not you came to Austin at any time right after that?

A. I did.

Q. How long after?

A. I came here on the morning of the 25th.

Q. When did you leave home?

A. I left the morning of the 24th, and stopped all day in Houston.

Q. What was your purpose in coming to Austin?

A. I came here to buy some of those lands. I had four sections leased and wanted to buy them if I could. I bought four sections that I had leased and forfeited the lease. I thought as they were for sale I would save my lease money and buy the lands.

Q. Did you have instructions from any other party to make applications for them?

A. Yes.

Q. How many?

A. Only one, I think.

Q. For how many sections?

A. All he could get.

Q. Was he a citizen of the county down there?

A. Yes.

Q. Did you succeed in getting the sections for him?

A. No.

Q. How did you fail?

A. They told me there was only two sections left, and they were in the northern part of the county, and I didn't think he wanted them. All but two sections had been sold when I got here.

Q. Since that date have others been put on the market?

A. I did not examine; that is what he told me.

Q. Yours were held for sale by your lease, were they?

A. Yes; I had the opportunity of buying them on account of my lease.

Q. What did you do with your lease?

A. I cancelled my lease.

Q. Did Friedenhaus know that you had gotten this notice when he came to your office?

A. He told me I had it.

Q. Did he tell you how he found out you had it?

A. I did not ask him. He knew I had it. That was the day after I received it. I got it on Sunday, but could not file it on Sunday.

Statement by respondent's counsel: I suppose we might as well have an understanding now as to what the judgment of this court is with reference to the character of testimony which is now being sought, as at a later day, as it will constantly come up. The articles charge collusion between the Land Commissioner, Boaz and Friedenhaus. If we understand it, the law of evidence is, on that subject, that after the conspiracy or collusion, as the gentlemen term it in their articles of impeachment,—after that condition has been established, then the declarations of either or any of the participants in that conspiracy or collusion made in the execution of the common design, would be admissible in evidence, but before any declaration of the conspirators can be legitimately admitted in evidence other than the party on trial, the conspiracy must first be established. That is to say, prima facie established, properly established, and until that is established the declarations of any of the co-conspirators, as alleged, would be nothing more in the law than hearsay. As much so as the declarations of any person who was not charged to have belonged to the conspiracy. I will state for the information of the court that up to this time there has been no testimony admitted of one character or another, that shows or tends to show that there was any conspiracy between the Commissioner, Boaz and Friedenhaus, or between the Commissioner and any one else, and for that reason, until the collu-

sion or conspiracy is established this testimony is not admissible, and is illegitimate and has, and can not but help have, upon the minds of the court, some influence and effect, and if perchance, may be, so they will not establish any conspiracy or any collusion, and if they fail to thus establish the collusion as alleged in the articles of impeachment, then this court will have been burthened with all this illegitimate testimony. This testimony, in its effect, the collusion or conspiracy having been alleged, the declarations of those who are alleged to have been concerned in the conspiracy will militate against this defendant, when in truth and in law it ought not to have been admitted. If the testimony is damaging of itself to the party who makes the declarations it makes scars on the minds of the court that no withdrawing can ever remove, and for that reason respondent objects to this testimony until in due time and in due order it can be admitted. First, when the collusion or conspiracy has been established, and secondly, the declarations of the parties to the conspiracy have been established. As this question will come up again, and as they have just endeavored to bring out declarations of Friedenhaus, we desire a ruling now.

Article 15 is as follows:

Art. 15. That W. L. McGaughey, Commissioner of the General Land Office of the State of Texas, unmindful of the high duties of his office, and in violation of his oath of office, in the county of Travis, State of Texas, did, on the 9th day of January, 1893, unlawfully and corruptly collude with David Boaz, E. Friedenhaus and others for the unlawful purpose of enabling and permitting said persons aforesaid to purchase the said sections of public free school lands in Liberty county, described in the foregoing articles in this exhibit, to which reference for description is here made, in violation of the spirit and the intent of the law, at greatly less than their value, and to give them unfair advantage over the citizens of the State, and especially over the citizens residing in the vicinity of said lands, and did then and there in furtherance of said unlawful purpose aforesaid, price said lands to said persons as detached and isolated from other public lands, when in truth and in fact the same were not so detached and isolated, as said W. L. McGaughey then and there well knew, and did then and there without first

giving the notice to the county clerk of Liberty county, as required by law, price said lands at the price of \$2 per acre, and did then and there offer the same for sale to said persons aforesaid, and did then and there immediately sell the same to said persons aforesaid at said price, when in truth and in fact same were worth the sum of \$5 per acre per section, and when in truth and in fact other parties, and especially persons residing in the vicinity of said lands who desired an opportunity to purchase the same when the same should be offered for sale, were deprived of any opportunity to apply for the purchase thereof, as said W. L. McGaughey then and there well knew.

The point we make is that the articles charge a collusion or conspiracy, and that before the declarations of Friedenhaus can be admitted, that the collusion as charged here must be established prima facie, and after they have been established prima facie, then all the declarations of those charged to be in the conspiracy, made in pursuit of the common design, would be admissible, but admissible in no sense until the conspiracy has been established.

Statement by relator's counsel: Theoretically, the respondent's counsel is correct. We go further and say that the declarations of a party charged as a conspirator showing the conspiracy, would not be admissible, but a conspiracy or collusion may be established by circumstantial evidence as well as by positive evidence. You can not prove conspiracy by the declarations of one of the conspirators. You could not introduce in evidence statements of one conspirator as proof of the conspiracy, but here are acts and words which become verbal acts. Here is the conduct of one of the parties doing things in and about the subject matter of the conspiracy. Those things which he says in explanation of his conduct and acts may be introduced just as readily as any act he may perform. It is offered for the purpose of showing that Friedenhaus knew that this witness had the notice.

Chair overruled objections.

Q. Where did Friedenhaus live?

A. I don't know where he lived.

Q. Does he live in Liberty county?

A. He don't live in Liberty county.

Q. Did he say when he came on that trip?

A. I don't remember.

Q. At what time did the train arrive there?

A. At 7:15 in the morning and 11 at night.

Q. Is Liberty a small place?

A. Yes.

Q. Is the arrival of strangers generally noted by the people there?

A. I don't know.

Q. Are they more likely to attract attention than in a larger place?

A. Yes.

Q. When did you first know of his being there?

A. I first knew of his being there when he came into my office that morning.

Q. Did he tell you when he had arrived?

A. I don't think he told me when he came. I don't think he told me when he left Austin.

Q. How far is Liberty from Austin?

A. About 200 miles.

Q. Did the people of your county have any opportunity to buy these lands under the arrangement under which others than actual settlers could purchase?

A. No.

Q. Your office was the proper office to receive notice of that fact for your citizens?

A. Yes. But I think any officer can take an affidavit.

Q. Did they know that they could make application other than actual settlers before that notice came?

A. I think not.

Q. Are you agent for the railway alternate sections down there?

A. I am.

Q. At what price are they held?

A. From about \$2.75 to \$5 per acre.

Q. That, as I understand you, is where there is a school section, that the next section is a railroad section.

A. Yes; I represent the T. & N. O. and H. & T. C. Railway lands. They are from \$2.75 to \$5 per acre.

Q. Are they any better lands than the school alternates?

A. Some are. The H. & T. lands on the west side of the river, near Davis' ranch, are better than those on the east side.

Q. Is the railroad section any better than the school sections?

A. In that block of school sections they were taken up by Pruitt and his mother. There are very few railroad sections in that block. They took it up under the dollar act. The best lands there were taken up under the dollar act. The blocks of surveys that are left, the school surveys, are as good as the railroad surveys.

Q. On what terms do the railroads sell their lands?

A. One-fifth cash; four years on the balance at six per cent interest.

Q. On what terms were these school lands sold out to Friedenhaus, yourself and other purchasers.

A. One-fortieth with cash; time on balance, forty years; interest, 8 per cent.

Q. At what price?

A. At \$2 per acre.

Q. Did the Commissioner make any inquiry of you before these lands were put on the market as to what they were worth?

A. No.

Q. Do you know of any inquiry made by him to ascertain the value of these lands?

A. I do not.

Q. Could the value of these lands have been ascertained?

A. It would have depended on when he made the inquiry. It would be owing to the time he made the inquiry.

Q. If he made the inquiry on the 25th of January could he have found out?

A. Yes. There had been a great change in the value of lands lately. Land values went up a 100 to 150 per cent there in January.

Q. Was this increased value matter of public notoriety?

A. Yes. These things seemed to all come about the same time. This boom there.

Q. Due to what facts?

A. I don't know, except that northern people came in there.

Q. Do you know whether or not the fruit, rice and vegetable industries were being pushed?

A. Yes.

Q. When did the drainage commence?

A. The drainage commenced last year. This boom commenced in January of 1893. Northern capitalists came in there in January this year.

Q. Could the Commissioner have ascertained this change in the value by inquiry down there? Could the county surveyor or the county surveyors have told him?

A. Yes, I suppose so; so far as I know there was no inquiry made; there was a price of \$2 per acre fixed on the land.

Q. Do you know D. Boaz?

A. Yes, I know him.

Q. Where does he live?

A. I think in Houston.

Q. Does he live in your county?

A. No.

Q. Do you know E. Friedenhaus?

A. Yes.

Q. Where does he live?

A. He lives at Austin.

Q. Do you know where D. Adriance lives?

A. Only from the allegations in the petition, which says in Brazos county.

Q. Do you know Mr. Simmons.

A. Yes.

Q. Where does he live?

A. He lives in Houston.

Q. Do you know J. H. Collett?

A. Yes.

Q. Where does he live?

A. He lives in Austin.

Q. Do you know A. Schwartz?

A. No.

Q. Do you know where he lives?

A. No.

Q. Does he live in your county?

A. No.

Q. Do you know P. J. Lawless?

A. No.

Q. Does he live in your county?

A. No.

Q. Do you know Mr. Carter?

A. No.

Q. Does he live in your county?

A. No.

Q. I understand you received this notice on Sunday, but it did not become a public record until Monday morning?

A. Yes; I could not have filed it on Sunday.

Q. You say you came to Austin to buy these lands, some for yourself and some for your friends?

A. Yes.

Q. Did you go at once to the Land Office?

A. I did.

Q. When did you reach Austin?

A. I arrived on the morning of the 25th. I went at once to the Land Office to see about buying the four sections I had previously leased.

Q. Did you telegraph in to the office before you came?

A. No.

Q. Did you make any arrangement to sell the land before you purchased it?

A. I did not.

CROSS EXAMINATION.

Q. Mr. Cameron, you say you are county clerk of Liberty county?

A. Yes.

Q. These four sections that you bought, you bought about the 25th of January, did you?

A. Yes.

Q. They are sections you had leased before, and you came up and cancelled the lease and made the purchase, did you?

A. Yes.

Q. There was no collusion between yourself and anyone else, was there?
A. No.

Q. It was an open, square bargain, was it not?
A. Yes.

Q. I will ask you what was the classification of these lands. These lands had been on the market for a number of years, had they not?

A. Yes; since 1888. That was the first classification I received.

Q. Do you know if they had been on the market prior to that time under the act of 1879 or 1881?

A. Yes; they were on the market under the act of 1881.

Q. Had not a number of them been bought and forfeited to the State?

A. Yes. Mr. Skinner and wife bought nine sections and forfeited them. They bought them at a dollar and failed to make payment, and forfeited them to the State. He did not forfeit them, but deeded them back to the State. Mr. Fowler did the same thing with two sections.

Q. Something has been said about sections 22 and 24, in the southern part of the county in the Davis pasture, I will ask you if these men, Marshall and Thompson, made any written application to you as county clerk for the purchase of these two sections?

A. They never did.

Q. Did they make any legal application at or after the the letter as actual settlers?

A. One or both told me they wanted those sections, and I asked them if they had built a house on the land and were living on it, and they said not, and I said you can't take the oath,

and I said go and build on the land and I will take your affidavit. Mr. Fairchilds asked me, too, if he could not tent on the land and I told him I did not think that would be sufficient. I told Mr. Humphreys the same thing. He built a house on it. I told them all to build houses on the land.

Q. What time were sections 22 and 24 reported to you as sold?

A. They were sold on October 20, 1892. The application was not made to me.

Q. Was that before the last general election?

A. That was before the general election.

Q. I will ask you, in speaking of those Houston and Texas Central lands, if they had not been uniformly put on the market at \$2 per acre and classed as dry, grazing lands?

A. Yes; this paper I have in my hand is signed by Bramlette, chief clerk, and is dated January 16, 1892.

Q. Was that classification which you now have an office file in your office?

A. Yes.

Q. There were no secrets made about these official papers, were there?

A. No.

Q. Any citizen could have seen and examined them, could he not?

A. Yes.

Q. Could not any citizen of Liberty county who wanted to inspect those papers have at any time come to you and inspected them?

(Classifications here testified about are read to the court and are as follows):

"Original Classification Act of 1887."—Public School Land. Liberty County.
Sec. 22, not requiring occupancy.

Sec.	Blk.	Certificate	Original Grantee	Watered or Dry	Agricultural, Grazing or Timber	Number of Acres	Price
1		1834	Mrs. Lucinda Priest.	Dry	Graz	414 $\frac{1}{4}$	\$2 00
2		1834	Mrs. Lucinda Priest.	Dry	Graz	279	2 00
(Confederate scrip.)							

REMARKS—Situated about 14 miles N. 70 E. of town of Liberty.

Examined and approved, as the classification and appraisement of certain unsold public school land in Liberty county, as made in this office January 19, 1893, under act of 1887, and acts amendatory thereof.

W. L. MCGAUGHEY, Commissioner.

Classified by E. M. Phelps.

GENERAL LAND OFFICE, AUSTIN, TEXAS.

I, W. L. McGaughey, Commissioner General Land Office, do hereby certify that the above is a true copy of the classification and appraisement of certain unsold public school land, as made in this office.

[SEAL.] In testimony whereof I hereunto sign my name and cause to be affixed the impress of the seal of the General Land Office this 19th day of January, A. D. 1893.

W. L. MCGAUGHEY, Commissioner.

"Original Classification under Act of 1887."—Public School Land, Liberty County.

Sec.	Blk.	Certificate.	Original Grantee.	Watered or Dry.	Agricultural, Grazing, or Timber.	Number of Acres.	Price.
4		10-408	H. T. & B. Ry. Co...	Dry	Graz	640	\$2 00

REMARKS.—Under December 22.

Examined and approved, as the official classification and appraisement of certain unsold public school land in Liberty county, as made in this office September 9. 1891.

W. L. MCGAUGHEY, Commissioner.

GENERAL LAND OFFICE, AUSTIN, TEXAS.

I, W. L. McGaughey, Commissioner General Land Office, do hereby certify that the above classification and appraisement of certain unsold public school lands, is a true copy as made in this office.

[SEAL.] In testimony whereof I hereunto sign my name, and cause to be affixed the impress of the official seal of this office, this the 9th day of September, A. D. 1891.

W. L. MCGAUGHEY, Commissioner.

"Original Classification Act of 1887."—Public School Land, Liberty County.

Sec.	Blk.	Certificate	Original Grantee	Watered or Dry.	Agricultural, Grazing or Timber	Number of Acres	Price
6		617	T. & N. O. R'y Co...	Dry	Graz	322 ³ / ₄	.....

REMARKS—Detached. Can be sold under sec. 22.

Examined and approved as the classification and appraisement of certain unsold Public School Land in Liberty county, as made in this office, January 28, 1893, under act of 1887, and acts amendatory thereof.

WM. BRAMLETTE, Chief Clerk.

Classified by E. M. Phelps.

GENERAL LAND OFFICE, AUSTIN, TEXAS.

I, W. L. McGaughey, Commissioner General Land Office, do hereby certify that the above is a true copy of the classification and appraisement of certain unsold public school land in Liberty county, as now made in this office.

[SEAL.] In testimony whereof, I hereunto sign my name, and cause to be affixed, the impress of the seal of the General Land Office, this 28th day of January, A. D. 1893.

WM. BRAMLETTE, Chief Clerk.

"Original Classification Act of 1887."—Public School Land, Liberty County.

Sec.	Blk.	Certificate.	Original Grantee.	Watered or Dry.	Agricultural, Grazing or Timber.	Number of Acres.	Price.
8		594	T. & N. O. Ry. Co...	Dry	Graz	180	\$2 00

REMARKS.—Detached; can be sold under sec. 22. acts approved April 1, 1887.

Examined and approved as the classification and appraisement of certain

unsold public school land in Liberty county, as made in this office February 6, 1893, under act of 1887 and acts amendatory thereof.

W. L. MCGAUGHEY, Commissioner.

Classified by E. M. Phelps.

GENERAL LAND OFFICE, AUSTIN, TEXAS.

I, W. L. McGaughey, Commissioner General Land Office, do hereby certify that the above is a true copy of the official classification and appraisement of certain unsold public school land as now made.

In testimony whereof, I hereunto sign my name and cause to
[SEAL.] be affixed the impress of the seal of the General Land Office, this 6th day of February, A. D. 1893.

W. L. MCGAUGHEY, Commissioner.

"Original Classification Act of 1887."—Public School Land, Liberty County.

Sec.	Blk.	Certificate	Original Grantee	Watered or Dry	Agricultural, Grazing or Timber	Number of Acres	Price
152		241	F. M. Gardner (Confederate Scrip)	Dry	Graz	10402-5	\$2 00

REMARKS—This is irregular survey No. 150, situated about 14 miles, S. 60° W. from the town of Liberty.

Examined and approved, as the classification and appraisement of certain unsold public school land in Liberty county, as made in this office, January 18, 1893, under act of 1887, and acts amendatory thereof.

W. L. MCGAUGHEY, Commissioner.

Classified by E. M. Phelps.

GENERAL LAND OFFICE, AUSTIN, TEXAS.

I, W. L. McGaughey, Commissioner General Land Office, do hereby certify that the above is a true copy of the classification and appraisement of certain unsold public school land as made in this office.

In testimony whereof, I hereunto sign my name and cause to
[SEAL.] be affixed the impress of the seal of the General Land Office, this 18th day of January, A. D. 1893.

W. L. MCGAUGHEY, Commissioner.

"Original Classification Act of 1887."—Public School Land, Sec. 22, Liberty County.

Sold under act of 1881 and cancelled by relinquishment to the State.

Section.	Block.	Certificate.	Original Grantee.	Watered or dry.	Agricultural, Grazing or Timber.	Number of acres.	Price.
N. $\frac{1}{2}$ & S. W. $\frac{1}{4}$ 174	4	25-1364	H. & T. C. Ry. Co..	Dry	Graz.	480	\$2 00
S. $\frac{1}{2}$ & N. W. $\frac{1}{2}$ 176	4	25-1365	H. & T. C. Ry. Co..	Dry	Graz.	480	2 00

Examined and approved as to the classification and appraisement of certain unsold school land in Liberty county, made in this office November 2, 1892, under act of 1887 and acts amendatory thereof.

W. L. MCGAUGHEY, Commissioner.

Classified by E. M. Phelps.

GENERAL LAND OFFICE, AUSTIN, TEXAS.

I, W. L. McGaughey, Commissioner General Land Office, do hereby certify that the above is a true copy of the classification and appraisement of certain unsold public school land heretofore described.

In testimony whereof, I hereunto sign my name and cause to
[SEAL.] be affixed the impress of the seal of the General Land Office, this 2nd day of November, A. D. 1892.

W. L. MCGAUGHEY, Commissioner.

"Original Classification Act of 1887."—Public School Land, Liberty County.

Sec.	Blk.	Certificate	Original Grantee	Watered or Dry	Agricultural, Grazing or Timber	Number of Acres	Price
1006		906	Aaron Walter..... (Confederate scrip.)	Dry.....	Graz.....	1280	\$2 00

REMARKS.—Detached; can be sold under sec. 22, act approved April 1, 1887. Examined and approved, as the classification and appraisal of certain unsold public school land in Liberty county, as now made in this office, January 31, 1893, under act of 1887 and acts amendatory thereof.

Classified by E. M. Phelps.

W. L. MCGAUGHEY, Commissioner.

GENERAL LAND OFFICE, AUSTIN, TEXAS.

I, W. L. McGaughey, Commissioner General Land Office, do hereby certify that the above is a true copy of the classification and appraisal of certain unsold public school land.

In testimony whereof, I hereunto sign my name and cause to [SEAL.] be affixed the impress of the seal of the General Land Office, this 31st day of January, A. D. 1893.

W. L. MCGAUGHEY, Commissioner.

Q. Were they all put on the market at \$2 per acre to be sold to anybody?

A. Some sections had been sold once and forfeited to the State or relinquished to the State and had been put on the market again.

Q. I will ask you if from time to time you did not get frequent communications from the Land Office that these lands were being put on the market and if these communications were not open archives to be inspected by any one?

A. Yes. Generally the letter would be "I herewith enclose you classification so and so. Please record." I generally threw the letter enclosing the classification in the fire. Anyone could have come in and examined these documents.

Q. I will ask you if in your county any record of the school lands, if there has ever been any secret kept in regard to them and if the business has not been transacted in a fair, plain business way?

A. It has.

Q. About the time this list of lands was put on the market, there was something of a boom in the market, was there?

A. Yes.

Q. Was any official notice of the increased value of these lands given to the Commissioner?

A. Not by me.

Q. Do you know of anyone who did?

A. I don't know of anyone who did.

Q. I will ask you if these lands were not placed on the market and kept there from January, 1892, down to the time these sales were made to actual settlers?

A. Yes; except my four leased sections, and I think the north half of one of them was taken up by an actual settler. I think if you will see the award, Mrs. Chivret took the north half of section No. 180.

Q. Was it not generally known that they were upon the market for sale to actual settlers at any time from that on?

A. Yes.

(Witness here exhibits and reads the following classification:)

"Original Classification Under Act of 1887 of Public School Lands, Sold under Act of 1881 and relinquished to the State."—Public School Lands, Liberty County.

Sec.	Blk.	Certificate	Original Grantee	Watered or Dry	Agricultural, Grazing or Timber	Number of Acres	Price
170		25-1362	H. & T. C. R'y Co...	Dry.....	Grazing...	640	\$2 00
178		25-1367	do.....	Dry.....	Grazing...	640	2 00
180		25-1368	do.....	Dry.....	Grazing...	640	2 00
182		26-1585	do.....	Dry.....	Grazing...	640	2 00
184		26-1586	do.....	Dry.....	Grazing...	640	2 00
186		26-1587	do.....	Dry.....	Grazing...	640	2 00
188		26-1588	do.....	Dry.....	Grazing...	640	2 00
190		26-1589	do.....	Dry.....	Grazing...	640	2 00
194		26-1591	do.....	Dry.....	Grazing...	640	2 00

REMARKS.—Examined and approved, as the official classification and appraisalment, under the provisions of the act of 1887 of certain unsold public school lands in Liberty county, as made in this office January 16, 1892.

WM. BRAMLETTE, Chief Clerk.

GENERAL LAND OFFICE, AUSTIN, TEXAS.

I, W. L. McGaughey, Commissioner General Land Office, do hereby certify that the above is a true copy of the classification and appraisalment of certain unsold public school lands in the county of Liberty as made in this office.

[SEAL.] In testimony whereof I hereunto subscribe my name, and cause to be affixed the impress of the official seal of the General Land Office, this, the 16th day of January, A. D. 1892.

WM. BRAMLETTE, Chief Clerk.

Q. Were any of them taken up by actual settlers except the north half of 180?

A. No. I think W. F. Hardin leased one of the sections.

Q. You say some gentleman came up or sent up by you and wanted to apply through you for some of this land; was he an actual settler?

A. No.

Q. Have you applied for any of the lands for yourself or as agent for others?

A. Yes.

Q. I will ask you if you have not sold lands as good as these last year, for less price than \$2 per acre?

A. Not last year. I have offered to sell them. I got no purchasers till January. I sold the north half of the Welch for \$2, on the west side of the river. It is the same character of land as this. It is a little further from the railroad.

Q. Has not land been something of a drag there, until this boom got up?

A. Yes. I offered to sell my land last year at 75 cents per acre.

Q. About how many acres was that?

A. About 1000 acres. I offered it to Geo. Davis at Dallas for 75 cents.

Q. Was it about the same quality of land as this? Was it as good as this?

A. About the same. This whole thing seemed to come at one time.

RE-DIRECT EXAMINATION.

Q. Would you take 75 cents for it now?

A. I would not take the 75 cents now.

Q. When was it you offered it for 75 cents.

A. That was last summer.

Q. You were shown a number of classifications?

A. Yes.

Q. Where did you get them?

A. They were sent to me for record.

Q. I notice the word "detached" on one of them and "can be sold under section 22"; what does that mean?

A. That meant, I suppose, sold to anybody.

Q. What did the word and figures "22" mean on one of those classifications?

A. It means it can be sold to anybody, and does not require occupancy or actual settlement.

Q. Now, as a matter of fact, were these lands that are so marked here under section 22, were they not isolated and detached from other school lands?

A. Sections No. 174 and 176, Houston and Texas Central, join; I think they join one another.

Q. Is section 4, H. T. and B. railway, detached or not?

A. I could not say without looking at the map.

Q. Here is one Aaron Walter, Confederate; is it detached?

A. That is attached to section 32, Gulf, Colorado and Santa Fe; it is marked here as detached and can be sold under section 22; the classification is dated in January, 1893; in this testimony, I can only tell by looking on the map; the field notes may not connect them; I am testifying from the map.

Q. There was another classification shown you of nine sections; are they joined together?

A. One of them is detached; they brought suit for all of them; section 184 is a detached section, and there are other sections in there detached.

Q. When you received a classification, such as these are, and it contained no words to show it was put on the market as detached and isolated, in what manner did you put it on the market?

A. I kept the classification exactly as it is here; my book is ruled and I kept it exactly like the classification.

Q. Suppose a purchaser came to make an application, and no words about detached were on the classification; what would you do?

A. They never applied.

Q. If he had have applied, what would you have done?

A. I would have gone to the classification.

Q. Suppose no words, such as detached or section 22, were on the clas-

sification; what would you have told him?

A. I could not tell you what I would have done.

Q. What was the purpose of those words on the classification?

A. The purpose of those words on the classification are to show that the sections were for anyone.

Q. Under instructions from the Land Office were you not requiring an oath of them?

A. Not from the Land Office that I know of; but my construction of the law and the blanks furnished me by the Land Office.

Q. Where is section 6 of the Texas and New Orleans?

A. I think there is two or three of them.

Q. There is only one of those classifications signed by Wm. Bramlette, is there not?

A. Yes.

Q. What is the date of that?

A. On the 28th of January, 1893.

Q. Who was it sold to?

A. To E. R. McLean.

Q. You don't recognize it as being in one of those blocks or sections, do you?

A. I think it was on the west side of the river, but I can not say positively.

Q. Does it appear to be attached to other school lands?

A. No, it does not; I can't tell positively, though.

Q. Do you know whether Marshall and the other man went back and decided to improve the land or not?

A. Not of my own knowledge.

Q. State whether or not application had been made to you by actual purchasers, or inquiries from actual settlers desiring to purchase these other lands?

A. No; nothing since this investigation has come up. In Houston, the marshal told me he wanted to make out an application. I told him it would not require him to come to Liberty.

Q. Have not some of your people moved on the land and made improvements on them?

A. Some told me they have. One said he intended to hold the land as an actual settler, but he never made an application to me. He told me to telegraph and he would send the money from Galveston, but he never made a written application to me.

RE-CROSS EXAMINATION.

Q. There has been no application made since the 23d of January, has there? Did he claim to have been an

actual settler until after this trouble came up?

A. No.

Q. Do I understand you to say that these two sections, 22 and 24, in Davis' pasture, that these two young men, Thompson and Marshall, wanted, that you had official notice in October, 1892, that these lands had been sold from the Land Office?

A. Yes.

Q. These men had made their verbal application before that time, had they?

A. Yes.

Q. They never did file applications according to law, did they?

A. No.

Q. You say these school lands in Liberty county were held on the market a number of years for actual settlers, and that you only had an application for one-half section?

A. I think from January, 1888, up to this time, the record shows only that to actual settlers.

Q. Are these men living on the land now?

A. Some of them are.

Q. How many of them?

A. One of them said the mosquitoes were too bad last summer and deeded his land back last summer; one man, I have been told, sold out and went home.

Q. So the only actual settlers in all these years were about nine?

A. Yes.

Q. How many sections does that embrace?

A. About fifteen sections.

Q. How much can an actual settler buy?

A. Four sections.

Q. They have not usually taken near that much have they?

A. Only two of them took four sections, and the balance took fractions of sections.

RE-DIRECT EXAMINATION.

Q. The settler can buy a section and then buy some more, can't he?

A. Yes; but the limit of his right is four sections. He need not take them all at once. There have been about eleven actual settler purchasers.

Q. That would have covered a right to have purchased forty-four sections, would it not?

A. Yes.

Q. Would not that have been about half the school land in your county?

A. Yes; probably more.

Q. The lands were some sought after, and more sought after in the last year or two than they were before that, were they?

A. Yes.

Q. They were just beginning to come in as actual settlers, were they?

A. I don't know about actual settlers; they just came in demand in January.

Q. You say some of these lands had been sold out at \$1 an acre some years ago and the purchases forfeited?

A. I think Skinner forfeited his about last January a year ago.

Q. When had he purchased?

A. About 1881 or 1882.

Q. Under the old act?

A. Yes.

Q. He had made default all along, had he not?

A. Yes; he paid the first payment and paid nothing else. I think others defaulted too.

RE-CROSS-EXAMINATION.

Q. How many actual settlers made application to you under section 22 of the act of 1887?

A. None at all.

Q. How many actual settlers made application to you to buy any of these lands under section 22 of the act of 1887 when it was first put on the market?

A. I think they all made them to me except one.

Q. Were they all sold as soon as the act of 1887 went into effect; how many in all in the county?

A. No actual settlers made application to me; only one in that block 9.

RE-DIRECT EXAMINATION.

Q. If they were actual settlers they did not have to make application, did they?

A. Yes.

Q. The trouble was the man that was an actual settler had to swear, and it was harder for him, was it not?

A. Yes.

Q. I presume it was easier to the other fellow to buy and then buy from him, was it not?

A. I don't know about that.

C. F. Winkler, witness for prosecution, recalled:

Q. You stated you received a notification from the Commissioner that school lands not already sold were from and after that date put on the market for sale to anybody?

A. Yes.

Q. State whether or not the morning you received that notice any gentleman came to your office to inquire about it?

A. Yes; a gentleman came.

Q. Who was the gentleman?

A. Mr. Sam De Cordova.

Q. Was he a resident of Houston?

A. No, he lives in Austin.

Q. Did he come about the time the notice came?

A. He came before the notice came.

Q. Did he inquire about it before it came?

A. He asked me whether or not I had received a communication from the General Land Office. I said I had not.

Q. Did he state about what?

A. No.

Q. What further did he say about it?

Respondent objects to this testimony, it being inadmissible, as it is hearsay.

Relator offers it as an act.

Objection was by the Chair sustained.

Q. What, if anything, did he say in regard to the communication?

(The Chair understands the rule to be that if DeCordova said anything to show that he knew the communication had been sent or received, that would be proper.)

A. He asked me if I had received a communication from the General Land office, and I said I had not, and he said that I would that morning, and he asked me if I had any objection to acknowledging the receipt by telegram, and I said I would, and I did acknowledge receipt by telegram.

Q. That is, acknowledging receipt of the letter read here yesterday about the method of selling having been changed?

A. Yes.

Q. Do you know C. D. Dillon?

A. No.

Q. Is there any such man living in your county, or upon these school lands in your county?

A. No.

Q. Do you know F. M. Beatty?

A. No.

Q. Where does he live?

A. I don't know where he lives.

Q. Does he live in your county?

A. No.

Q. Do you know E. R. McLean?

A. Yes.

Q. Where does he live?

A. He lives in Austin.

Q. Do you know W. Thompson?

A. Yes.

Q. Where does he live?

A. I think he lives in Houston?

Q. Out on the lands or in town?

A. He lives in town.

Q. What is his business?

A. I don't know what his business is.

Q. Do you know F. McLaughlin?

A. No.

Q. Do you know what his business is?

A. No.

Q. Do you know DeCordova?

A. Yes.

Q. Where does he live?

A. In Austin.

Q. Do you know Stafford?

A. Yes.

Q. Where does he live.

A. He lives in the town of Houston.

Q. What is his business?

A. He is in the real estate and cattle business.

Q. Do you know David Boaz?

A. No.

Q. Do you know where he lives?

A. No.

Q. Do you know T. F. Taylor?

A. No.

Q. Do you know where he lives.

A. No.

Q. Do you know Cuny?

A. No.

Q. Where does he live?

A. He lives in Houston.

Q. What is his business?

A. He is a land agent.

Q. None of these parties live on these lands in this county, do they?

A. No, as far as I know.

Q. You are well acquainted with the county and would likely know if they lived on the land, would you not?

A. Yes; I don't think anyone lives on the land.

CROSS-EXAMINATION.

Q. I will ask you if that is the settled part of the county?

A. No.

Q. Does anyone live there or near it?

A. No.

Q. Have you the official papers of your office on the sale of school lands?

A. Not here.

Q. These are low, wet lands, are they not?

A. Yes; generally low, wet lands.

Q. The water stands on them all the winter, does it not?

A. Yes; during the winter season.

Respondent admits that Harris and Liberty counties were organized prior to 1875.

Court took recess till 3 p. m.

AFTERNOON SESSION.

Court met pursuant to adjournment. Quorum present.

Lieutenant Governor Crane presiding.

Motion was made by a member of the court that the witnesses be

brought in and put under the rule and kept in attendance upon the court, so that they can be called to testify without delay.

Said motion was carried.

Motion was made to reconsider the vote by which the above motion was carried.

Motion to reconsider was lost.

Motion was made that the court take a recess for thirty minutes.

Said motion was lost.

All the witnesses present were called forward, sworn, and placed under the rule.

TESTIMONY OF W. K. BAYLOR.

W. K. Baylor, witness for prosecution, having been duly sworn, testified as follows:

Q. Where do you reside?

A. In Austin.

Q. What position, if any, do you occupy here?

A. I am examining clerk in the Land Office.

Q. What department are you in in the Land Office, and what do you mean by examining clerk?

A. All files go through my desk to the patent room. I pass upon all change of title, legality of surveys, etc.

Q. Do you remember, Mr. Baylor, in December or January last, a question arising among the Land Office departments as to the legality or illegality of the sale of school lands in Harris and Liberty counties?

A. I think the first time I heard of that was in the first part of January.

Q. State whether you had any conversation about that with the Commissioner.

A. Yes.

Q. State to the court what it was and what it related to as nearly as you can remember.

A. I heard that there had been quite a lot of school lands sold in Liberty county, and I met up with the Commissioner one morning on the street and he and I got to talking about it. Mr. F. T. Roche was present. We told the Commissioner that there seemed to be a great deal of talk about it. He said there had been some school lands sold in Harris and Liberty counties. The Commissioner said that the land in Liberty county was sold three weeks before he knew anything about it at all, and that there was one block of surveys, I think he said seventeen surveys in the block, which had been sold, and which had been improperly sold, and that it was not detached land. That

the lands sold in Harris county was not strictly detached land, but that he was responsible for those sales and was going to let them stand. I said to him, as the Liberty county land had been sold without his consent or knowledge that I thought he ought to cancel those sales, as they were illegal and liable to get him into trouble. He said he would cancel them, the sales, on Monday morning, as they were illegal. On Monday morning he came around to my desk, and said that he had thought the matter over carefully and that he would not cancel those sales.

Q. Did he say why he would not?

A. He said as far as he could hear about it, there was no one wanted them cancelled, except a lot of land sharks around Austin, and that he would not do it. I told him that in all probability there would be an investigating committee from the House and that I thought he had better do it, and he said he would not do it, but would suffer impeachment before he would do it.

Q. When was that?

A. I don't remember what day it was; it was after the Legislature met.

Q. Did he say whether those sales were legal or not?

A. He said they were clearly illegal and that it was not detached land, and that it was sold without his knowledge or consent; he said there was a block of seventeen sections; he came to my desk on Monday morning and said he had thought about it and would not do it.

Q. Do you know anything about the rules of the department in the office about putting the school lands on the market?

A. I don't; I paid very little attention to that; there was a separate department for that, and they were independent and run their own affairs; I don't know what has been the custom about that; they run their own affairs.

Q. Did the Commissioner tell you he had had a conversation with Mr. Ross, and did he tell you what Ross said about the lands being detached?

A. That was before the conversation on the street; I heard that the fathers-in-law and fathers of some of the clerks in the department had been buying school land; I told him he had better make some inquiry about it, as there was some complaint about it; I understood that there was some complaint being made about it; I think he sent for Mr. Ross, and made some inquiry about the sale

which had been made down there; Mr. Ross came up, and the Commissioner said the lands that were bought by Mr. Ross' father-in-law was detached land. That ended the conversation; the first conversation I detailed was after that. The last conversation I had was on Sunday.

Q. Did he say to you in that conversation on Sunday whether they had been sold as detached and isolated, or whether to actual settlers?

A. He said they had been sold as detached and isolated lands, and they were not detached, and for that reason he would cancel these sales.

Q. Were those sales cancelled?

A. No; I don't know personally; I heard they were not.

Q. Did you ever hear him say if they were cancelled or not?

A. No; I never heard him say they were cancelled.

Q. Do you know F. P. McLaughlin?

A. Not that I know of.

Q. Do you know F. M. Beaty?

A. No.

Q. Do you know where they live?

A. No.

Q. Do you know Mr. DeCordova?

A. I do.

Q. Where does he live?

A. He lives in Austin.

Q. What is his business?

A. I understand he is a land agent.

Q. Do you know E. R. McLean?

A. No.

Q. Do you know T. F. Taylor?

A. I know a gentleman by the name of Taylor.

Q. Have you seen his name in the Land Office?

A. I don't remember seeing his name in the Land Office?

Q. Do you know P. J. Lawless?

A. No.

Q. Do you know Mr. Schwartz?

A. No.

Q. Do you know J. H. Collett?

A. Yes.

Q. Where does he live?

A. He lives in Austin?

Q. What is his occupation?

A. I don't know.

Q. I will as you to approximate as nearly as you can the time you had the first conversation with the Commissioner. You stated you had one on Monday, subsequent to the one of Sunday, and that you had one prior to the Sunday conversation; when was that?

Q. (By witness) Do you mean the one in regard to the fathers-in-law and relatives buying school land?

A. (By counsel) Yes.

A. (By witness) That was only two

or three days before we had the talk on the street.

Q. When was the conversation on Sunday; fix the time as nearly as you can?

A. I can't fix it very definitely; I don't know whether it was two or three weeks after the Legislature had met. I believe they met on the second Tuesday in January, and I don't remember how long after it was.

Q. Was it in January that you had the conversation with him?

A. Yes; it was after the Legislature met. That was how I came to speak to him about it. I could not tell the dates; I don't know them.

Q. Judge, do you know what the ruling of the Land Commissioner with regard to those lands in Liberty county; whether or not they were subject to sale to actual settlers, those that were not detached and isolated?

A. I don't know what his ruling was as to the lands in Liberty county, but I know what his ruling was as to all school lands. The ruling was that nothing except a section that was isolated and detached could be sold to any person except an actual settler.

Q. Was that the ruling under Colonel McGaughey?

A. Yes.

Q. When did you enter the Land Office as an employee?

A. I went in with Mr. McGaughey.

Q. Was what you have stated the ruling up to the time of these sales?

A. Yes.

Q. Did you ever hear him say why he changed his ruling or what induced him to change it?

A. I never heard him make any explanations for changing it, or that he had changed it; all that he ever said to me about it was that it was sold without his consent.

Q. Judge, I will ask you whether or not you are a lawyer.

A. Yes.

Q. Was it customary for the Commissioner to consult with you on law points?

A. Yes; he often does.

Q. Did he consult with you about these Harris and Liberty county land sales, except in the conversation you testified about?

A. No; it never was mentioned at all.

CROSS-EXAMINATION.

Q. You say you are a lawyer?

A. Yes.

Q. You said those conversations you had with the Commissioner took place after the sales of those lands?

A. Yes.

Q. How long after?

A. I don't know, because I don't know when the lands were sold.

Q. That is not in your department, is it?

A. No.

Q. Your department is what?

A. Well, I have no separate department of my own; I am simply examining clerk of the Land Office. The school land department is down stairs, and I stay up stairs.

Q. These school land matters don't come, as a rule, within your jurisdiction?

A. No, I have nothing to do with making or recording the sales; they are down stairs and I am up stairs.

Q. You say you don't know what time those sales took place?

A. No.

Q. You do know, however, that those sales had been made before you had the conversation with the Commissioner, don't you?

A. I simply heard that.

Q. Can you give us the date on which you heard that those sales had been made?

A. No; but it was only a few days before the conversation with the Commissioner.

Q. Was it after the Legislature was in session a week or two?

A. I don't recollect the time; I think the Legislature was in session.

Q. There was no secret about those land matters, was there?

A. Not at all.

Q. I will ask you if you know of any way to cancel the sales after the sales had been made and the evidence of the sales have gone into the hands of the purchasers and the money paid, except by decree of court.

A. Yes; I think the Commissioner could cancel them.

Q. By what authority could that be done?

A. I don't think, if the lands were attached and not detached land, that the sale would be valid, but would be void.

Q. Then there would be no sale at all if they were void, would there?

A. No.

Q. If the sales were void there would be no sales, would there?

A. I suppose something ought to be done by the Commissioner to show them cancelled.

Q. In your legal opinion, then, the sales were void and not voidable?

A. Yes.

Q. Then, if the sales were voidable, it would require a decree of the court, would it not?

A. Perhaps it would.

Q. Would you not regard sales made where purchase money had been paid and evidence given to the purchaser, that to cancel such sale would require a decree of the court?

A. No; I thought that the Commissioner could cancel the sales, and I think so yet.

Q. You say you don't recollect the exact date of this conversation?

A. No; it was some time in the latter part of January.

Q. Was it not sometime in the latter part of January?

A. No; I think it was between the first and the middle of January.

Q. Did not those sales take place mainly about the 23rd day of January?

A. I don't think so.

Q. What sales were you talking about?

A. I don't know what sales I was talking about.

Q. Then you don't know what sales you were talking about?

A. No.

Q. I understood you a while ago to say something about the sales to Mr. Schwartz, the father-in-law of Mr. Harris.

A. I said I heard that some of the clerks in the school land department had fathers-in-law who had been buying school lands.

Q. Who were they?

A. I afterwards learned that Mr. Schwartz was one of them and Mr. Duffield was another.

Q. Who is Mr. Duffield?

A. Mr. Duffield is the father-in-law of Mr. Ross.

Q. Who else, did you learn?

A. I don't remember. Well, I believe I also mentioned a sale made to Mr. Gillespie, a son or something of one of the clerks in the Land Office.

Q. Then the conversation you referred to did occur after those sales, after the Duffield and Gillespie sales?

A. Yes.

Q. How long after those sales?

A. I don't know because I don't know when they were made.

Q. How long after you heard it?

A. The same day, or next day; I mentioned it to him as soon as I got hold of it.

Q. Do you know where that Duffield land is?

A. No.

Q. Have you since found out where it is?

A. No; I have never examined the records.

Q. Did you not look at the map?

A. No; I don't think I ever did.

Q. Then you were, as a rule, advising him to cancel sales that you had not looked at on the map to see whether they were isolated sections or not?

A. I did not advise him to cancel those sales.

Q. What sales did you advise him to cancel?

A. I did not know that there was any truth in what I had heard?

Q. What did he say to you in that conversation?

A. In that conversation, he said they were detached sections; after that conversation the Commissioner, myself and Roche happened upon the street, then it was that the question about the sales in Liberty and Harris counties came up.

Q. Did I not understand you to say a while ago that you and Mr. Roche first approached him on the street in regard to it?

A. I don't think you understood me that way.

Q. I will ask you to refresh your mind; did you not say that you first talked to him down on the street, and that you afterwards had a conversation with him on Monday morning in the office?

A. Well, now let me tell you how that was, and I will tell you as I stated it awhile ago; I said that he said he would cancel those Liberty county sales; that was on Sunday; on Monday morning he came around and said that he would not do it.

Q. Where was it you gave him the legal advice?

A. We were standing on the street.

Q. Then the first conversation took place on Sunday on the street, did it?

A. No; the first conversation about the land was about the relatives of the clerk buying.

Q. Where was that?

A. In the land office; it was only a few days before the Sunday following, when we had a conversation on the street.

Q. Mr. Baylor, I will ask you if, when the Commissioner of the Land Office talked to you on Monday about the sales to Mr. Duffield, if he did not tell you that he found that that was isolated and detached land and was legal?

A. That conversation did not take place on Monday.

Q. When was it he told you that he found on examination that the sale to Duffield was isolated and detached land, and was legal?

A. It was on the same day, and

within an hour after I mentioned it to him.

Q. What day was that?

A. I don't know; it was some time during the week; we were working in the Land Office at the time.

Q. Was it in the middle of the week?

A. I think it was three or four days before the conversation I had with him on the street.

Q. When was it he told you he examined into the matter, and had found that the Duffield purchase was regular and that he would not cancel it?

A. It was within an hour after I mentioned the subject of the clerk's relatives buying land.

Q. In this conversation the Commissioner did not tell you that it was because he believed they were right and legal, did he?

A. No.

Q. What was the reason he gave?

A. The reason he gave me for not cancelling them is that no one wanted them cancelled except a lot of land sharks around Austin, and that he would not do it. That is word for word as I remember it as he stated it.

Q. Where was it you and Mr. Roche talked to him on Sunday?

A. I think it was on the corner of the Avenue and Seventh street, perhaps.

Q. Was there any previous conversation between yourself and Mr. Roche on that subject?

A. No, we had not agreed on anything; we had been talking about it and thought it would be a good idea to tell the Commissioner about it.

Q. Was there anything understood about it, or secret with the Commissioner?

A. No; so far as any knowledge I have of it, it was entirely open and above board.

Q. Was not everything open connected with those sales?

A. Entirely so. If there was anything hidden, dark or obscure about it, I never knew anything about it.

TESTIMONY OF F. T. ROCHE.

F. T. Roche, witness for the prosecution, after having been duly sworn, testified as follows:

Q. What is your name?

A. F. T. Roche.

Q. Where do you work?

A. In the General Land Office.

Q. How long have you been engaged in the General Land Office?

A. From 1876 to 1883, then I was in the State Land Board until 1887, and stayed there until about two months

before McGaughey's term began, and have been in the Land Office ever since.

Q. What position do you hold in Land Office?

A. I am first assistant clerk of the general department.

Q. Do you remember hearing something of the question of the illegality of the sale of some school lands in Harris and Liberty counties last January?

A. Yes; about that time.

Q. Did you have any conversation with the Commissioner about those sales?

A. Yes; I had several. The first conversation occurred in this way: The clerks had all left for dinner with the exception of myself and Mr. Townsend, who was employed in the school land department. I heard a conversation between Mr. Shelley and Mr. Townsend, the latter complaining of land sales. I heard Mr. Shelley criticizing Mr. McGaughey rather severely.

Q. Begin at the conversation between you and the Colonel.

A. I went into the Colonel's room and told him Shelley was criticizing him very harshly. I believe I told him that Mr. Shelley said that land had been sold to speculators that ought to be sold to actual settlers, and that Mr. Townsend had shown me a map, and that in my opinion he ought to know that Shelley was criticizing him. Shelley and Townsend followed me into the room. McGaughey replied that the land had been sold, and he was going to stand by it. I think the conversation was in January, but I am not sure.

Q. You say it occurred about noon?

A. Yes.

Q. Was that all you remember occurring?

A. I left the room and don't know what occurred after that.

Q. When was the next conversation you had with him?

A. I had heard on Saturday evening late that there was to be an investigation, and I thought he ought to know of it. I thought of it all night. The next morning I went to the Cumberland Presbyterian church, to ask what we had better do. I went there and talked with Baylor. While we were standing on the corner of the Avenue and Seventh street, McGaughey drove up in his carriage, and after exchanging a few observations, I told him I had heard there was going to be an investigation, and that he ought to know of it. He replied that

he was fully informed, and courted an investigation. A general conversation ensued, and he said, I am fully aware of what is going on, and that you clerks have been getting up data against me. I told him that if any one had informed him that I had done it, his informant had told a falsehood. At the time I did not remember that at the request of the chief clerk I had prepared a list of purchasers of land in Liberty and Harris counties which, he said, he wanted to show the Commissioner. I did not remember it at the time.

Q. Was that list made during office hours?

A. It was.

Q. What was said in this conversation between you and Baylor and the Commissioner in regard to the sale of the Liberty and Harris county school lands, with reference to their being isolated and detached, and whether he considered they were legally or illegally made?

A. Said he was responsible for the Harris county lands, and he was responsible, and that the Liberty county lands were not detached and should not have been sold.

He said that there were seventeen sections in the block. I said I had not looked at them, and he said he had. I advised him to cancel those sales. I said for him to cancel those sales and this investigation would not take place. He agreed to cancel them. Our object was to protect him and befriend him against this very thing. That is about all while Mr. Baylor was present. The colonel and I had a conversation and I assured him we were his friends.

Q. Did you have a conversation after that?

A. Yes, once or twice; let me see. Yes; I think we had one conversation in which he told me that he believed he had the right under section 22 to sell any land in counties organized prior to 1875 to others than actual settlers.

Q. Was that after the conversation on Sunday?

A. It was two or three weeks after. I had a conversation with Colonel McGaughey in his room. I don't think it occurred on that Sunday in which he made the impression on my mind that he had been imposed upon. I think he said he had been imposed upon.

Q. Did he say who had imposed on him?

A. He said that some men would come to him and ask him to put a sec-

tion of detached land on the market, and he would go down and tell the clerk, and he would put the whole county on, and they would do it without his knowledge.

Q. Do you remember where and when that conversation occurred?

A. I don't know the date, but it was between the first and last conversations.

Q. Which was the last conversation; the Sunday conversation?

A. That was the last extended conversation. I had more or less talk with him at various times. The last conversation I had with him was the day the committee reported to the Senate. I then assured him of my sympathy.

CROSS-EXAMINATION.

Q. What department of the office are you in?

A. I am not in the school department, but in the office proper. I am up stairs and the school land department is down stairs.

Q. Were not those detached sections on the market all the time since the act of 1887?

A. Yes.

Q. This first conversation that you spoke of in regard to Mr. Shelley at the time you spoke of telling the Commissioner something that Mr. Shelley said, can you give us a definite idea of when that was?

A. I think it was in January, but purposely I abstained from remembering dates, as I did not want to have anything to do with it.

Q. It was either in January or in February, was it not?

A. Yes.

Q. It was after the Harris county land sales had been made, was it not?

A. Yes.

Q. Was it not also after the Liberty county land sales had been made?

A. I don't know; I think not.

Q. How long was it before the conversation that you say you and Mr. Baylor had with him down at the Cumberland Presbyterian church?

A. I think it was two weeks, but I am not sure.

Q. I will ask you if you didn't know that the Legislature was in session?

A. Yes; I know, too, that Christmas had passed.

Q. You had the conversation in regard to Shelley, and afterwards you had the conversation with him at the church, did you?

A. No, on the corner of Congress avenue and Seventh street. I saw

Mr. Baylor and took him from the church. We told him we heard there would be an investigation by the Legislative committee.

Q. What did he say about that?

A. He said he courted it.

Q. Did he not say that he had done nothing wrong?

A. No.

Q. Did he not say that he was willing for the Legislative committee or anyone else to investigate what he had done?

A. It would bear that construction, but those were not the words.

Q. He was not afraid of investigation, was he?

A. He said he courted it.

Q. You say your object was to protect him?

A. Yes.

Q. You would not have wanted to protect him unless you had believed that he had conscientiously done right would you?

A. No; we thought he had made a mistake; we thought he had done wrong and wanted to protect him.

Q. You say you had made a certificate at the request of the chief clerk?

A. I had made a list of the purchases to show to the Commissioner; I made it at the request of the chief clerk.

Q. Who was the chief clerk?

A. Judge Bramlette.

Q. What did you do with the list?

A. I gave it to Judge Bramlette, and in about two days afterwards he gave it back to me and I tore it up; I gave it to Judge Bramlette to show to the Commissioner, and he gave it back and I tore it up and threw it in the waste basket.

Q. Who requested you to make it?

A. Judge Bramlette asked me to make it to show to the Commissioner; Bramlette told me it was useless to show it to the Commissioner, and that the Commissioner had been approached by Mr. Baylor on the subject and he was decided, and it was useless to show it to him; I wanted to wash my hands of it; my object in approaching him was because I believed he had made a mistake and had done nothing wrong.

Q. Did you see the chief clerk in the school land department when you got up that list?

A. I did not go in the school land department; I wish to state why Judge Bramlette asked me to make him the list; all I know I was told by the clerk; I had been informed by Mr. Townsend that the relatives of certain clerks had bought land, and I did not

believe McGaughey know anything about it.

Q. You say when you and Mr. Baylor saw him and talked to him on the corner on Sunday that it was suggested that he cancel the sales and stop an investigation, and you advised him to do it?

A. Yes.

Q. Did he not say to you then that he courted an investigation if they wanted to make it?

A. Yes.

Q. He declined to do that to stop an investigation, did he not?

A. No.

Q. What did he say?

A. He said he would cancel the sales, I had no other conversation with him. I was in the room when he had a conversation with Mr. Baylor, but I did not hear the conversation.

Q. That all occurred after the sales had been made, did it?

A. Yes; the conversation on Sunday occurred after the sales had been made and I gathered that from what McGaughey told me and I did not know whether the sales had been made or not.

RE-DIRECT EXAMINATION.

Q. Did the Commissioner make any remark or statement to you that he did not want to be dictated to by you?

A. No; he told me after Mr. Baylor had talked to him about the relation of the clerks buying lands he (McGaughey) told me he did not propose to be criticised and would fire any one that did it and I told him I had not criticised him.

Q. You state that you and Mr. Baylor advised him that if he would cancel those sales that the probability was there would be no investigation and if so it would not amount to anything?

A. Yes; he said he would cancel those sales in Liberty county. He stated those sales were made three weeks before he knew of it. He said he would stand by the Harris county lands but not by the Liberty county.

Q. Did you ever hear him make any other statement in regard to that?

A. Yes; to tell the truth I do not want to talk about it. I heard him say afterwards that he construed the law to mean that he had a right to sell any land under the law of 1875 to any person he wanted; I had several conversations with him; Col. McGaughey always treated me courteously and gentlemanly.

Q. (by the President). Did you say the Commissioner said that when he, the Commissioner, would tell a clerk

to put a section on the market that the clerk would put the whole county on the market?

A. No; he said that whoever a party would come to him to put a section on the market that the party would go down and tell the clerk to put the whole county on the market, and that the clerk would put it all on.

Q. Did he say who those parties were who imposed on him?

A. No; I thought it was clerks in the office in conjunction with others.

TESTIMONY OF L. S. ROSS, JR.

L. S. Ross, Jr., witness for prosecution, on being duly sworn, testified as follows:

Q. What is your name?

A. L. S. Ross, Jr.

Q. Do you hold any position in the Land Office?

A. Yes.

Q. What position, or in what department of the Land Office?

A. In the school land department.

Q. Do you remember the circumstances or about the time the school lands in Liberty and Harris counties were put on the market?

A. Yes.

Q. I believe the Harris county lands were put on the market first, were they not?

A. Yes.

Q. Do you know how that came about?

A. Yes.

Q. State what you know about it.

A. Well, the first knowledge that I had of it, Mr. David Boaz presented me two applications at my desk and stated that the Commissioner—

Respondent here objects to any conversation out of the presence of the respondent.

Objection is sustained, and the witness is cautioned only to state facts.

Q. Tell what occurred.

A. He presented the applications to me.

Q. Did you see him in conversation with the Commissioner prior to the presentation of the applications.

A. No.

Q. Was that the first time you had seen him in the Land Office at that visit of his?

A. That was the first time on that visit; I had seen him several times before; he had been in the office a week or two or a month before that.

Q. Who was with Boaz?

A. When he came in the office I think he was alone.

Q. Did he get the land when he presented those applications?

A. No; not at that time.

Q. What occurred?

A. I informed him that those lands were not on the market as detached, but that I would consult with the Commissioner, and took the application up to him and showed him the map where the sections were, and the matter was discussed at some length in regard to those applications.

Q. Who was it discussed by?

A. By the Commissioner and myself and John McGaughey.

Q. Was Boaz present.

A. I don't think so?

Q. Do you know Mr. Friedenhaus?

A. Yes.

Q. Was he there?

A. No.

Q. Was he up stairs?

A. No; not when the Harris county land was put on the market.

Q. Who was present in this conversation up stairs?

A. The Commissioner, John McGaughey and myself.

Q. Tell the court what occurred in that conversation?

A. I don't know that I can repeat the conversation; the Commissioner stated that he thought he could place these lands on the market as detached land; that his construction of the law was that if they did not join any unappropriated public land that he could place them on the market as detached lands, and I think Mr. John McGaughey took a contrary view of the matter.

I carried the applications to the Commissioner and got a map of the lands; I showed him them. He picked out by the application the sections that were applied for.

Q. What was the conversation?

A. The Commissioner stated that he thought he could put those lands on the market and sell them as detached lands under section 22 of the acts of 1887, and he construed the law to mean if those sections did not join any unappropriated public lands they could be put on the market if situated in counties organized prior to 1875.

Q. What did John McGaughey say to him?

A. I don't remember; he said he did not think they could be sold; he took a contrary view from the Commissioner. The commissioner instructed that the county be placed on the market under section 22, that is, all the school lands should be sold to any person who should apply.

Q. Was there any award made on those applications?

A. No; not for several days. The

date of the award is always noted on the outside of the application, but the date of the sale is dated back to the date of the note, because the Treasurer in opening up an account with a person always opens up the account with the date of the note, and the date of the sale in our office must agree with the Treasurer's date. The application may be filed to-day and the award not made for a month.

Q. Had these lands been on the market to others than actual settlers before that?

A. No.

Q. That was the first time this block had been placed on the market to others than actual settlers, was it?

A. Yes.

Q. How long had they been placed on the market before they were all sold.

A. They were sold within a few days after. They were not on the market long.

Q. What about placing the Liberty county lands on the market?

A. Well, I believe Mr. Boaz and Mr. Friedenhaus had filed applications for some of those lands in Liberty county, and I informed him that they could not be sold except to actual settlers, and the Commissioner came down stairs, and Mr. Boaz and the Commissioner and myself went into the draughting room to examine the map, and I pointed out the sections that had been applied for, the applications for which I had in my hand, and Mr. Boaz made quite a lengthy speech as to the character of the land, and said it was unfit for settlement and had been on the market for several years, and that the land was low and flat and was crawfishy land, and that a person could not live on it without going to the expense of ditching it, and the Commissioner said that if that was the character of the land that he could place them on the market under his construction of the law. He then authorized them to be placed on the market. He said if it was not fit for settlement that he could not see any reason why it should not be sold to others than settlers.

Q. Had any of this land ever been sold as detached and isolated land before that?

A. No; I don't think so. Yes; I believe there was one section, perhaps, or two, that had been sold prior to that date.

Q. To actual settlers?

A. No; as detached land. I believe

there were two sections sold to Mr. A. Schwartz.

Q. Who is Mr. Schwartz?

A. I don't know his business. He lives in Austin. He is the father-in-law of Mr. Harris.

Q. What is Mr. Harris' business?

A. He is corresponding clerk in the Land Office.

Q. How long before the Boaz and Friedenhaus conversation before this Schwartz sale?

A. About eight or nine days.

Q. Did you hear the Commissioner say anything about that sale?

A. No.

Q. With the exception of the Schwartz sale there had been no sale of the land in this block except to actual settlers, had there?

A. Yes; that is my recollection of it.

Q. Did Messrs. Boaz and Friedenhaus both talk to the Commissioner about this?

A. I don't think Mr. Friedenhaus had much to say; I don't remember of his having talked any; Boaz did most of the talking.

Q. What did the Commissioner say after that?

A. Well, he said he authorized us to go ahead and sell them on those applications as detached lands, and I construed that to mean the same as Harris county lands.

Q. How long was it before they were all gone?

A. Some were sold within four or five days; some few sections were left there for three or four weeks.

Q. What did he say about writing to the county clerk?

A. He gave me no instructions in regard to that.

Q. You made the award right straight, did you not?

A. No; we notified the county clerk that the lands had been changed and detached.

Q. What was the object of that notice?

A. Well, I suppose the object of it was the lands were on the market to settlers, and the object was to give notice to the people and county clerk that they could be bought by others.

Q. Did you get a reply from him.

A. Yes.

Q. Did you make the sales upon those applications that you had in the land office.

A. No; there were corrected applications filed by some of the parties three or four days after. They were just substituted for their other applications.

Q. Their old applications held the

right of way for their substituted applications, did they?

A. Yes.

Q. Then these purchasers' rights dated from the time they induced the Commissioner to put the lands on the market?

A. That would be the date of the other sale, but the date of the award would be the date the Commissioner signed it.

Q. State whether or not, in this conversation between the Commissioner and Boaz, if the Commissioner asked Boaz if he wanted any of the land?

A. Yes; he asked Boaz if he wanted to buy some of these lands, and Boaz said he did, and he had the application, and the Commissioner said all right, that he thought it good public policy to sell these lands and he put them on the market.

Q. Did he say that as soon as Boaz said he wanted some?

A. Yes, very soon after.

Q. Mr. Ross, what counties join Liberty on the southeast?

A. I believe Chambers.

Q. What on the south?

A. Chambers.

Q. On the east?

A. Jefferson county.

Q. This is all one body of school land in Liberty, Chambers and Jefferson, is it not?

A. Yes.

Q. Those in Chambers and Jefferson are not placed on the market, and are only for sale to actual settlers, are they not?

A. The ruling has not been changed on them.

Q. Did Mr. Boaz want any of those in Chambers or Jefferson county.

A. No; I don't think he made application for them.

Q. Is it not a fact that some applications have been made for sections in this block, not actual settlers, and have been rejected?

A. Yes.

Q. Lately?

A. I believe they were filed in January.

Q. Why were they rejected?

A. For the reason that the ruling in placing the land on the market had not been changed and they were only on sale for actual settlers and the parties applying did not swear they were actual settlers.

Q. Who was the first man who applied for the purchase of those lands, that had been held for actual settlers, applying not as actual settlers for the land, in the blocks in Harris and Lib-

erty counties? I mean the blocks joined together in Liberty county.

A. I think Mr. Haldeman, for one, and Mr. Schwartz.

Q. Did they get theirs?

A. Mr. Haldeman got his. He got one section that joined the Schwartz section.

Q. Who got the first in Harris county in that block.

A. Mr. Boaz, I believe. That is his award dates first. I don't know if he got it first. The Harris county lands were put on the market in December, the Liberty county lands in January.

Q. I will ask you if parties in those counties, Harris and Liberty counties, had not applied and written to the Land Office to know if they could not purchase?

A. Yes, I believe there was some correspondence.

Respondent objects, as the letters are the best evidence.

The Chair rules that the objection is well taken if the letters are accessible.

Q. Are those letters preserved?

A. Yes, they are on file now.

Q. State whether or not you told Mr. Boaz, in the presence of the Commissioners, that parties had written letters and applied for those lands, and that if they gave Mr. Boaz the land that there would be a kick.

A. I told that to the Commissioner, but I don't think in Boaz's presence.

Q. Then the Commissioner knew that parties down there wanted to buy these lands that were not offering to buy them as actual settlers?

A. Yes; I suppose from that he would know.

Q. Mr. Ross, I will ask you if the ruling prior to this time had been that those lands could not be placed on the market, except to actual settlers?

A. Well, they were on the market for sale only to actual settlers. The Commissioner ruled in some instances, where there were only two or three sections, that they could be sold to any person.

Q. Did you tell the Commissioner whether or not you agreed with him on that point?

A. I think I told him I did not think those sales could be made in regard to the two sections applied for by Boaz unless the whole county was placed on the market; I did not think a distinction could be made with those two sections.

CROSS-EXAMINATION.

Q. How long had you been in that department?

A. About six years.

Q. Who did you first go in there under?

A. Under Mr. Hall.

Q. Had the Commissioner ever been called upon before that time to rule upon the question presented as was presented in regard to the Harris county and Liberty county lands?

A. No; not that I remember of.

Q. That was the first time he was called upon to make a ruling of that character, was it?

A. Yes.

Q. You had been acting without any particular ruling from him, had you?

A. Wherever the lands were in a block, and I knew what the law was, and of course applications were made for detached land, and if it was in a county where the land was only on the market for actual settlers, it could not be awarded.

Q. You had been acting that way for yourself without any ruling from him?

A. Yes.

Q. That was the first time he had been called on for a ruling?

A. Yes.

Q. What did you do when he decided you could sell the land under section 22?

A. I instructed the corresponding clerk to write a letter to the county clerk?

Q. Was that done?

A. Yes.

Q. The clerk had acknowledged the receipt, and then these applications were taken up and passed upon and awarded, were they?

A. Yes.

Q. Were the lands put on the market before the notice had been given and you were notified of the fact that it was received by the county clerk?

A. No; they were not. I consider that the lands were not on the market until the county clerk had acknowledged receipt of the letter, and then they were on the market. That was my construction of that.

Q. You were asked if these parties did not have a preference right to others?

A. I don't know if they had a preference right.

Q. Were not those applications cancelled?

A. They were rejected and new applications filed.

Q. Is this paper a similar application to those made (witness is here shown a paper).

A. Yes.

Q. In the application, is the note also filled out for which the land is sold?

A. Yes; it is part of the application.

Q. The application of that character had to be made after you received notice from the clerk of the receipt of your notification?

A. Yes; I required it. I rejected the application unless I had instructions to proceed differently.

Q. Do you know how long these lands had been on the market to actual settlers?

A. They had been on since 1888, some time.

Q. How many applications have been made to you by actual settlers intending to settle on the land? Take Harris county first.

A. There were a few.

Q. As to the Liberty county lands?

A. Very few; I suppose about a dozen sections.

Q. Do you know whether these lands were on the market prior to the acts of 1887 and 1889 to actual settlers.

A. Yes, I think they were.

Q. Do you know at what price?

A. I believe they were on the market under the dollar act at one time.

Q. Were any of these lands bought under the dollar act?

A. No; I believe some were, but I don't remember the sections.

Q. These lands remained on the market all the time to actual settlers and no actual settlers applied?

A. Yes.

Q. Do you know whether some three or four sections were sold four or five months before that, under section 22, in Liberty and Harris counties.

A. I don't remember.

Q. When Mr. Boaz came there and was talking about the Harris county lands, tell the members of this court what time of day it was.

A. It was in the morning; I don't know what time.

Q. During office hours, or not?

A. Yes.

Q. Who was present?

A. All the clerks were there; I don't know if any others were present or not.

Q. State whether there was any secrecy about the conversation between Mr. Boaz and the Commissioner, or between yourself and the Commissioner, in regard to the Harris or Liberty county lands?

A. There was not.

Q. Can you state the gentlemen who were present and in hearing of the conversation that occurred between

Boaz and yourself and John McGaughey and the Commissioner.

A. There were only two others in the room. They were Mr. Fauqua and Mr. Granberry. They have desks in the office.

Q. At what length did you discuss the matter?

A. I suppose we were ten minutes discussing the matter; we thoroughly understood the character of the land and all; there was nothing secret about it; it was perfectly open.

Q. Now, when these lands were placed on the market, did you keep any record in the office of it?

A. Only the letter which was copied; that was the only record we had.

Q. When you placed these lands on the market, was it a secret?

A. No.

Q. Did the Commissioner or anybody enjoin upon you to keep it a secret about putting these lands on the market?

A. No.

Q. How often were these records in your office examined by gentlemen here and those coming here from a distance?

A. I suppose they were examined every day.

Q. Did citizens here, and gentlemen from a distance when here, have access to the records, or would you show them to them?

A. They had access to them, or we would show them to them. They could go and look at them themselves.

Q. Did you, or not, have maps prepared showing these lands that were on the market? When you put Harris county on the market, did you have a map showing what lands were on the market?

A. No. There were maps, but not for public use.

Q. I want you to tell the court who was the first man that bought any section of land in Liberty county of this school land, as detached, after it was placed on the market out of this block?

A. I don't know who the first applicant was; they were all passed on at the same time. Some of the applications were passed on at the same time.

Q. What about Mr. Haldeman that you spoke of?

A. His application had been filed prior to the time that this block was placed on the market; and prior to the time that Boaz and Friedenhaus talked with the Commissioner; Boaz was the first man that put in an application to buy—an application for one section for himself.

Q. Had the Commissioner made any

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ruling on it at that time as to whether this block was subject to sale under section 22?

A. I don't understand the question.

Q. Do you know what Commissioner Hall's rulings were in regard to these two counties, or in either county; whether he placed lands on the market under section 22 that were in large bodies similarly situated to this?

(Relator objects as it is not a matter of inquiry if any other Commissioner violated the law or not, as that is immaterial.)

Statement by respondent's counsel: The question goes as to the intent of the party and also if we can show that he was following a precedent and to that extent we would be exonerated from any wrong intent.

Statement by the President: Is it that same class of lands you are referring to?

Answer by respondent's counsel: Yes.

Q. (By Chair.) I think the inquiry so far as it relates to lands similarly situated coming under the same act, it is admissible. The objection is overruled.

Relator objects to the form of the question as it is too general.

Said objection is by the Chair overruled.

Q. Do you know whether Mr. Hall, the Commissioner preceding McGaughey, put lands on the market similar to these in other counties?

A. Yes; in a number of counties.

Question (by relators): Were these other counties organized prior to 1875?

A. Yes.

Q. How many counties?

A. About fifty or sixty, or perhaps more.

Q. Examine that map. (Witness is here shown map.)

A. Those marked in red were all placed on the market, and it applied to all the school lands in that county. They were put on the market by Mr. Hall. This is Medina county.

Q. What does the blue represent on that map?

A. I don't know what that has reference to.

Q. Examine this map. (Witness is here shown map of McMullen county.) What represents the school land on that map.

A. I know that all the school land that was on the market in this county are for sale under section 22 and were put there by Commissioner Hall. This is McMullen county that I am speaking of,

Q. You don't know if the red represents the school lands or not, do you?

A. I think they do, but I don't know if they are school lands or not.

Respondent offers map of Medina and map of McMullen county in evidence in connection with this witness' testimony.

Relator objects to the introduction of the maps, as they have been colored since they were lithographed and have not been identified.

Statement by respondent's counsel: He has stated that school lands in these counties were placed on the market by Mr. Hall.

RE-CROSS-EXAMINATION.

Q. Can you swear of your own knowledge that these sections colored red are school lands?

A. Yes; I know that by having referred to the map very frequently.

Q. Is it not a fact that you don't know anything about this map?

A. Yes; that map is supposed to be a copy of the map we use in the office.

Q. (by the Chair): Do you know that this map is a copy of the map in the office?

A. No; I never compared them.

(Chair excludes the map of Medina county offered by respondent.)

Q. Have you examined that map to see whether it is authenticated and whether it is a Land Office map?

A. That is a Land Office map.

Q. Is that the same kind of map that is kept in the Land Office and sent out to parties wanting authenticated maps?

A. Yes.

Q. Are the maps sent out fixed like that, to show where the school lands are located?

A. No; we send it out without the coloring on it.

Q. Is that not a regularly authenticated map of the Land Office?

A. Yes; that is a lithograph map and a lithograph certificate; none of the lithograph maps are colored; I don't testify that it is correctly colored.

[Respondent withdraws the map for the present, and will have it compared and introduce it again.]

Q. How much land and how many counties were put on the market by Mr. Hall?

A. I don't know whether the lands in those counties were similarly situated, but there were fifty or sixty counties put on the market.

Q. When was that?

A. It was immediately after the act of section 22 went into effect.

RE-DIRECT EXAMINATION.

Q. Were those lands detached and isolated, that were placed on the market under the Act of 1887.

A. In some they were detached and in some they were not.

Q. In how many counties did he put lands on the market not detached and isolated?

A. I think in Medina county, but I am not positive about that.

Q. How many sections?

A. Ten or twelve.

Q. Any other counties that you remember of?

A. No, none that I remember of.

Q. When you say Mr. Hall put fifty or sixty counties on the market, under section 22, you don't mean to say that the lands were not detached and isolated, do you? Do you mean to say that he put lands that were not detached and isolated on sale to others than actual settlers?

A. I mean that he has put as many as fifty counties on the market under section 22; all the school lands in those counties.

Q. Do you know if those lands were attached?

A. No.

Q. Do you know if they were organized before 1875?

A. Yes; they were all organized before that.

Q. All of the counties were put on the market under the act of 1887?

A. Yes.

Q. Some were for sale to actual settlers, and some to any person, were they?

A. Yes.

Q. Did Mr. Hall sell the lands he put on the market to any person, or did he recognize a distinction?

A. In those fifty counties the lands were sold to others than actual settlers without any distinction as to whether they were detached or not. For instance, there was Medina county. There were eight or ten sales made in that county.

Q. How many sections in Medina county were sold that were not isolated and detached?

A. I do not know that.

Q. (by witness) Do you mean on the market in that county? I think about a hundred.

Q. I asked you how many sections in Medina county that joined were placed on the market under section 22.

A. I could not state without I saw the map.

Q. Approximate it.

A. I can't without seeing the map.

Q. There was only a small portion

sold to others in Medina county than actual settlers that were not detached and isolated, were there?

A. No.

Q. Was the application of Mr. Boaz marked rejected by order of the Commissioner.

A. No; I did that myself.

Q. In that conversation between he, you and Mr. Boaz, he told you to have the lands put on the market, did he?

A. He said to sell it to anyone who would apply.

Q. It is the custom to receive applications for land where they are not on the market?

A. Yes, but they are rejected. They are rejected after examination.

Q. Was not this merely a formal matter of marking these applications rejected?

A. Yes, I suppose so.

Q. It is a fact that these parties who had their applications on file were not rejected because others were ahead of them, were they?

A. They were rejected because I did not think they could be sold before the notice from the clerk was received acknowledging receipt of the letter. Other applications were put in their places. I suppose if their applications had been applied covering the same land, the matter would have been different.

Q. They were not marked rejected until the other applications were made by the parties, were they?

A. No.

Q. Parties would hardly file for land where there was an application on file not rejected, would they?

A. No, not if they found an application on file not rejected. They would not be apt to file on it.

Q. Do you know whether DeCordova and Friedenhaus filed their applications after the first ones were cancelled?

A. The Friedenhaus applications were rejected and he filed others. I don't remember about DeCordova. Friedenhaus did not file his last application in person.

Q. Who filed it for him?

A. I think Mr. McCarty, of Covert & McCarty, filed his. Applications were filed several days after the lands were placed on the market. Friedenhaus filed his first application in person.

Q. You say that when these lands were put on the market, it was a public matter in the office?

A. Yes.

Q. What record was kept of the fact that they were put on the market?

A. The record of classification, which is a bound book.

Q. Were these Liberty and Harris county lands reclassified on that book at that time? Was there any change in the classification between the time the letter to the clerk was written and the answer received?

A. There was a notice on the classification book the day the Commissioner made the ruling.

Q. Your letter books are not open to the public, are they?

A. No.

Q. Is it not a fact that there was nothing in the office to show that these lands were on the market except a copy of the letter in the book in regard to the placing of these lands on the market?

A. There was a memorandum made at the top of the classification book, which is a public record, that these counties had been changed to section 22. That was done I think the day the Commissioner put the lands on the market. I don't remember if Harris county was marked that way.

Q. Was it a fact that these lands were placed on the market when you made that entry?

A. Yes. The day the change was made was the date I put it on the book.

Q. Why did you require the parties to file new applications?

A. I supposed the applications should not be filed till the clerk had acknowledged receipt of the letter?

Q. You did not reject the applications until the parties had the new ones ready to file, did you?

A. Yes, every day as they were filed. I do not think that I did not reject them until the others were ready to file.

Q. Is it not a fact that it was not generally known here until after the county clerk had acknowledged receipt of your letter that these lands were placed on the market, and is it not a fact that Boaz and Friedenhaus were the only ones that knew it?

A. I don't know. They did know it.

Q. They found it out from the Commissioner as soon as he changed his rulings, did they not?

RE-CROSS EXAMINATION.

Q. State whether you or the Commissioner to your knowledge favored anybody in buying these lands, or was everybody treated alike so far as you were concerned?

Relator objects, as it is a conclusion of the witness. The answer would involve the opinion of the witness.

A. Everybody was treated alike.

Q. Are you the sale clerk?

A. I am. I made the examination and the awards.

Q. Were any of those first applications that were filed there cancelled by order of the Commissioner?

A. No. I don't think the Commissioner ever instructed me to cancel any of them. I did it of my own motion.

Q. (by the court.) Were all the applications for purchase of school lands referred to and acted on by the Commissioner, or did the clerk pass on some of those applications without referring them to the Commissioner?

A. Well, such as I considered did not come under the Commissioner's instructions I always referred to him; but if I had instructions to sell in a certain way, I always sold without referring it to the Commissioner.

Q. (by the court.) At whose request and by reason of whose influence were the Harris and Liberty county lands placed on the market to other than actual settlers?

A. I believe Mr. Boaz was the first who asked that they be placed on the market to others than actual settlers.

Q. (by the court.) That inasmuch as the report of the investigating committee of the Land Office said something of your receiving some gift, explain your connection therewith.

A. I received a silk hat from Mr. Boaz.

Statement by respondent's counsel: While we recognize of course the right of the court or any member of the court to ask any question that will affect the defendant, we believe that the question which is now in hands of the President for propounding to this witness at the instance of a member of the court, cannot be legitimate testimony to affect the defendant, and if it does not affect him prejudicially or advantageously, then it is not a question to be asked of any witness; but the question having been asked by a member of the court, the respondent, had it been asked by the managers, would have objected to it, but having been asked by a member of the court, the respondent does not feel like objecting to it, but feels that this explanation should be made.

A. I believe the first trip Mr. Boaz made up here some one came up to the office and told me that he had given me a silk hat and had left it at some store, and in the afternoon Mr. Boaz was in the office and I went out to thank him for the hat, and told him I did not wear a silk hat and had no use for it, and he stated to me that he gave me that hat to show his ap-

preciation for a letter that he had received from my father recommending him as a gentleman, etc., while my father was Governor of the State, and he showed me this letter, which he had in his pocket, and stated to me that he gave me that hat because of that letter.

RE-CROSS EXAMINATION.

Q. I will ask you if that hat had any influence, or anything whatever to do with the sale of these lands, directly or remotely?

A. No.

Q. Were the lands spoken of in that connection?

A. No, he said nothing at all of them in that connection.

RE-DIRECT EXAMINATION.

Q. Mr. Boaz made two trips to the Land Office, did he not?

A. Yes.

Q. State whether or not he stated in the presence of the Commissioner whether or not he made a profit on the prior purchases, and if the lands had increased in value?

A. I believe he stated on one trip that he had sold some of his land at a profit.

Q. How much profit?

A. I believe he said fifty cents per acre profit.

Q. I will ask you, when Mr. Boaz was talking with the Commissioner, trying to get him to put the Liberty county lands on the market, did not the Commissioner tell him that there were too many of the sections to put them on the market to others than actual settlers?

A. Yes, I believe he said there were too many in that block, and he did not believe that he should sell them.

Q. Did he adhere to that ruling?

A. No.

Q. After Boaz told him what kind of land it was and that no one could live on it, then the Commissioner told you to sell it, did he?

A. Yes.

Q. Did he ask Boaz if he wanted to buy?

A. Yes, he asked Boaz if he wanted to buy.

Q. The lands were for sale were they not, Mr. Ross.

A. Yes.

Q. They had been on the market for several years had they not?

A. Yes.

Q. You stated that Boaz said he made a profit on some of his lands?

A. Yes.

Q. What time was that?

A. After he had made the purchase of the Harris county lands.

Q. How long afterwards?

A. I don't remember.

Q. Was it a month after?

A. I think it was about the time he applied for the Liberty county lands. I think it was during the same trip. It was when he first came into the office and shook hands with the clerks and was talking for some time.

Q. Who did he tell that to?

A. I don't think he told anybody particularly. He was talking to all of the clerks.

Q. Was Mr. McGaughey there?

A. No. He was talking to me and the other clerks in the office. He was making no secret of it.

B. F. Cameron, witness for the prosecution, being recalled by the prosecution, testified as follows:

Q. You were asked this morning if after you made your application you had already arranged to sell the land at an advance in price. State whether shortly after you made your application you made a contract to sell your lands at an advance?

A. Yes.

Q. How much advance?

A. Seventy-five cents per acre cash advance.

Q. How much did that amount to?

A. \$1900.20 on the four sections.

Q. You had no difficulty in making that arrangement, did you?

A. No.

CROSS-EXAMINATION.

Q. How long was it afterwards that you made the sale by which you made a profit on your purchase?

A. About a month.

Q. Did you not state to the Commissioner at the time you made your purchase, that you had a prospect of advance?

A. No.

Q. After that you were to make 75 cents advance on the purchase?

A. Yes, but I did not make it.

Q. Do you claim the land yet?

A. Yes.

RE-DIRECT EXAMINATION.

Q. Why did you not make the profit?

A. The abstract of title would not go through.

Q. Why?

A. A lawyer passed on the abstract and passed it not good.

Q. For what reason?

A. He passed on three; one was good, the others were not, because I was not an actual settler.

Court adjourned until to-morrow morning at 9 o'clock.

SENATE CHAMBER, AUSTIN, TEXAS, May 3, 1893.

Court met pursuant to adjournment, with Lieutenant Governor Crane presiding.

Relator's counsel make the following motion, as an amendment to the articles of impeachment:

Now comes the board of managers and ask the Court to permit them to amend article 25 of the articles of impeachment by striking out the word "unappropriated" where it occurs in said article, for the following reasons: Because the insertion of said word "unappropriated" occurs there by clerical error of some of the board of managers, or of the stenographer in copying said alleged false certificate, and the error was not detected by said board of managers until after said articles of impeachment had been filed.

Motion refused by the following vote:

Respondent's counsel make the following statement:

Mr. President: We do not know what action the court took on the proposition as made in the demurrer, and in the argument that this was a criminal court; but whatever action was taken—whether this be strictly a criminal or a quasi court, or strictly and literally a civil court, the proposition on the part of the managers we concede to be unallowable, and we speak to this motion, not so much because of any importance that may be attached to it itself, as that we desire that this case shall be conducted as cases are conducted in court. Under the practice in both civil and criminal cases, in Texas, by not only statutory law, but by rules of court, no amendment can be made to the pleadings of the parties, either in a criminal case or a civil case, after the parties have announced ready for trial, and have gone to trial on the merits. While we concede that up to the time of the announcement of ready for trial and the entry by the court into the investigation upon the merits, that it is competent and allowable that the house, through its managers, might have preferred additional articles of impeachment, and might, to any extent they saw proper, have amended, modified, withdrawn or added to the substance of the articles of impeachment, yet after announcement of trial and having gone into the investigation on the merits of the case, that then it is too late, under any rule, in any court, under any practice that has been known to me, that

any court could entertain a motion of the character of the managers on the other side. And if the rule, as known to the practice in our courts where the property, the character and reputation of a citizen is concerned, are to be judged, it seems to us, if the court, that some authority ought to accompany the motion to change the rule. I know not how managers may be prepared with reference to tendering to this court any authoritative reason for their motion, but until they have provided themselves with some authorities or some reason, we take it that the practice prevailing in the courts of our country would exclude the motion. It is not because we deem the amendment material, that it adds to or takes from the strength, but it is upon the ground that it is our duty to the court, to the respondent, to ourselves, and to the political history of this country, to have this trial conducted according to rules of law, and it is for that reason we object.

Statement by relator:

We had hoped that counsel for respondent would consent to so reasonable a request. Counsel says he does not know whether this court has declared this proceeding to be civil or criminal. It seems to me that this court has declared this to be a civil proceeding. While it may be true that it may be characterized as quasi criminal in its nature, yet in its nature and practice it is established authority throughout the country—throughout all the American States—a civil proceeding. And more than that, the practice with respect to this proceeding is more liberal than in ordinary practice in civil cases.

We are not trying to appeal to the liberality of the court on this question. I believe the gentlemen will concede that the rule laid down by Major Walton is not an arbitrary rule. Major Walton will not insist on that proposition. He will agree that it is unsound. The Supreme Court of our State has settled that question. It has been decided that where there has been a clerical error—that where some error has crept in by inadvertence—that a party will not be prejudiced by that fact, but that the court will permit him to amend so as to correct the inadvertence or clerical error. I do not deem it necessary to look up these decisions and show them to this court. I believe this court, upon reflection, will know the decisions to which I refer. Where a man is suing for land and there has been a clerical error, the court will not prejudice the man's rights, but will permit him then and there to correct it. There are other instances of like character, the principle

being that it is the purpose of the court to get at the merits of a question, and not skim over it. While the rule in its general aspect is, that while pleading in civil cases may not be amended after announcement for trial, yet where there have been clerical errors and inaccuracies the Supreme Court has permitted the parties to amend.

Statement by respondent's counsel:

As stated by Major Walton, I think the question raised by the relator is one wholly unknown to the court. To come in at this, the eleventh hour, and want to amend the pleading which has been on file in this court for fully a week, and this court with a liberality in discussion, in argument, which certainly can not be complained of, when counsel on each side were allowed six hours, and when this article itself has been under discussion and has been overruled, then for these gentlemen to come in at this late hour and claim it as an inadvertence, it is strange. I am astonished that gentlemen of such ability will come in after a case has been on trial for two days or more and want to amend their pleading.

I admit very frankly that there are rules if a party is surprised, or if he finds himself in a position which would be a surprise to him, he might withdraw his announcement of ready for trial, if the court will let him, and amend his pleading. When that is done it will open the question of demurrers, and what the effect of the amendment will be. If they can come in at the eleventh hour and amend their pleading, and put it back where it was before, and undertake to amend it, it reopens the whole question. Certainly learned counsel for the State do not want to place themselves in that position. We have answered that article as it is, as follows:

In answer to the false certificate charged, respondent says: When the acts of selling the lands in Liberty and Harris counties by respondent were being considered in the House at the present session, one of his friends, a member of the House, told respondent that, in his opinion, the construction he placed on section 22 was correct, and that he expected a fight would be up in the House that evening, and that he wanted to be furnished with a map of Liberty county, showing that none of these lands joined or lay contiguous to any unappropriated public lands in that county. Respondent's son, who was a clerk in the Land Office, prepared and submitted to Mr. C. W. Pressler, an experienced draftsman in said office, of long experience, the map, and he found it correct; this was carried to

the desk of respondent to get his certificate to the correctness of the map; respondent was out, and in his absence he was informed and believed that Chief Clerk Bramlette was requested by said clerk to make the certificate, which he declined to do. Being a matter that was pressing, and a member of the House wanting the map, his son, after search, found this respondent, who himself made the certificate. He disclaims any intention whatever of attempting to procure wrongfully or fraudulently any certificate from said Bramlette, or any certificate whatever. He says that the certificate states the truth, and that the sections marked blue on said map were in truth and are now detached from any "unappropriated public lands." Respondent avers that he never spoke to said Bramlette, or in any manner whatever attempted to procure said certificate from him; but he avers the fact to be that he did make said certificate himself, and that the same was true and correct and in compliance with the law. All of which he is ready to verify.

Wherefore, having fully answered, your respondent asks that the facts be fully heard by this honorable court without delay, and that he be honorably discharged.

[Signed] W. L. MCGAUGHEY,
In propria persona.

FAULK,
HENDERSON,
LIGHTFOOT,
WALTON,
As Counsel.

Thereby answering the very terms of the article as they make it. Now they propose to come in and knock out the term unappropriated public land, what becomes of our answer? We have got a right to replead. We will have to demur in the first place and then replead. Inadvertence, oversight, mistake! How could the gentlemen have failed to see the mistake when our answer comes in and meets that question upon the question of unappropriated lands as they made it. Now after all that they want to knock out the word "unappropriated."

Question by the court:

Does the Senate or the House prefer the articles?

Answer by respondent:

My understanding is, according to the Constitution, that the House prefers its articles of impeachment. The House finds the bill and sends it in. Now the bill is found and is sent in as the one we have before us. Now counsel come in and attempt to change that bill. They might just as well have a district attor-

ney offer to change an indictment. As suggested by cocounsel, these articles could not be changed, as it is the bill as sent in by the House, and counsel are not allowed to change it.

Statement by relator:

I don't care to detain this court by discussion. The purpose of this was to avoid the circuitous route of getting amendments from the House. It was clearly a clerical error. I believe it in the power of the court to permit the correction of the error. If we were put down to rules of criminal indictment, that rule would apply. The grand jury may present an indictment and in certain instances the court may permit the district attorney to amend the indictment. I don't feel inclined to urge upon this court to pursue either one or the other course. It seemed to us that the matter was plain and while the counsel has been so full in his left-handed compliments to the board of managers, all of which we will return with interest, he seems to hang on the limbs of this matter, and he seems to try to compel us to go back to the House. We think the court has power to let us do this and we submit it.

The chair submits the motion to the court.

Motion was lost by the following vote:

YEAS—3.

Baldwin,
Bowser,
Tips.

NAYS—21.

Agnew,
Atlee,
Cranford,
Crowley,
Dean,
Dickson,
Douglass,
Greer,
Hutchison,
Imboden,
Jester,
Kearby,
Lawhon,
Lewis,
McComb,
McKinney,
Shelburne,
Simpson,
Smith,
Woods,
Yoakum.

ABSENT—7.

Boren,
Goss,
Presler,
Steele,
Swayne.

EXCUSED—2.

Browning,
Whitaker.

Statement by the chair:

Unless counsel on either side can have their witnesses here the court will order the clerk to issue process and have them placed in the hands of an officer.

L. C. Clark, witness for the prosecution, after having been duly sworn, testified as follows:

Q. You are an employee at the Land Office?

A. I am.

Q. How long have you been employed there?

A. Since McGaughey had charge.

Q. What department are you in?

A. In the school land department.

Q. Who worked with you in that department during the last four or five months?

A. Mr. John McGaughey, Mr. W. W. Harris, E. M. Phelps, L. S. Ross, Jr., J. W. Gillespie and Mrs. McKay.

Q. What are your duties in the office?

A. I am one of the corresponding clerks.

Q. Do you know about the time of the sales of school land in Harris and Liberty counties taking place?

A. I knew about the time the ones in Harris county were taking place, but not when they were placed on the market.

Q. How did you first learn it?

A. Applications and parties in the office buying the lands were my first notice of it.

Q. Do you remember the date on which that occurred?

A. No; I don't remember when; but it was some time toward the latter part of December.

Q. Did you hear any conversation between the Commissioner and other parties about the time the Harris county lands were put on the market?

A. I did not.

Q. What induced the Commissioner to put those lands on the market?

A. I don't think I know positively, except from hearsay.

Q. With respect to the land in Harris county put on the market, what has been the practice and custom of the office as to sales of this land prior to this time?

A. To reject all applications to purchase except by actual settlers.

Q. That is what portion of the lands?

A. That is the lands in blocks. I have forgotten what block it was. All the lands in the county are in blocks. There was only one block in the county at that time. That had been reserved for sale to actual settlers.

Q. Had that been the practice of the office?

A. That had been the practice of the office as long as I had been in the office.

Q. You were one of the corresponding clerks, were you?

A. Yes.

Q. Was it your duty to write out notices to county clerks about lands being placed on the market?

A. I often do that.

Q. Did you write to the county clerk of Harris county?

A. I don't know; I think I did.

Q. Were parties in the office, and did they have notice that these lands were being placed on the market after these notices were sent out?

A. I don't know positively, but I think so. I can state that it is a matter of record and the records will show.

Q. The record would not show whether the parties were in the office and had knowledge that these lands were to be put on the market, would it?

A. No.

Q. Who did you see in the office at the time?

A. I saw a great many.

Q. What was the occasion?

A. We usually have a crowd there. I saw parties there who had been there repeatedly before. It was no new sight. They had been there before.

Q. Name some of the parties.

A. E. R. McLean, Mr. Spaulding, E. Friedenhaus. I think Mr. Taylor was there. There may have been others, but I don't remember positively.

Q. What were they there for on that day?

A. To file applications for the Harris county lands.

Q. What business were these gentlemen engaged in about the State, if you know?

A. I think Mr. McLean and Mr. Taylor are in the real estate business. I don't know what business Mr. Friedenhaus is in. Mr. Spaulding is a clerk in Lucas's drug store. Spaulding made application for some lands. He made an application first and there was another application made and he applied for the other lands. The application was filed before his application.

Q. Was the application filed before notice to the county clerk?

A. I could not state.

Q. State what your first knowledge of the Liberty county lands being put on the market was?

A. My knowledge in regard to Liberty county was that Mr. Friedenhaus and Mr. Boaz came into the office and were talking to Mr. Ross about Liberty county lands. I did not pay much attention to it. Mr. Boaz and Mr. Ross went out, and the next I saw of them the two, together with the Commissioner, were in the draughtsman room down stairs. I went in there to get a map of Donley county, and I saw them looking over a map of Liberty county. Mr. Boaz first says to the Commissioner that he (Boaz) was away when most of the lands in Harris county were sold, and that he did not get a chance to buy any of them; and the Commissioner said, "Do you want any of these

lands?" and he said, "Yes; I have an application in my pocket;" and the Commissioner said, "Put them on the market."

Q. Did Boaz file his application?

A. I could not state; that is not my desk.

Q. He said he had the applications in his pocket ready to file, and the Commissioner then told Ross to put them on the market, did he?

A. Yes.

Q. Did you hear any further conversation about the number of sections?

A. I did not.

Q. You say Boaz was complaining that he was away when the Harris county lands had been put on the market, and that he did not get any?

A. Yes.

Q. Where had he gone?

A. I don't know.

Q. Do you know who wrote the notice to the Liberty county clerk?

A. I think I wrote it; but I don't know when it was sent. I wrote it as soon as instructed. The notice itself will show.

Q. Do you know what Boaz's business is?

A. I do not.

Q. Is he an actual settler down in that country?

A. No, I don't think he is. I think he bought some lands in the Panhandle as an actual settler.

Q. Do you know where he lives?

A. No, I do not.

Q. Was he about the office frequently?

A. Yes. No more than others.

Q. You say the Commissioner addressed him as Tuck. Is that his name?

A. I don't know.

Q. How did he appear towards the Commissioner?

A. He appeared friendly and intimate with the Commissioner. I always understood that they were friends before the Commissioner came to Austin.

Q. Did he ever evidence his friendship by the bestowal of any gift to the school land department?

A. That would depend upon what a gift is. I know that Boaz gave two gentlemen in the school land department some mining stock.

Q. What gentlemen were they?

A. John McGaughey and E. M. Phelps.

Q. What positions do they occupy in the office?

A. John McGaughey was head of the school land department and Phelps classified the land.

Q. Did he classify the price of the land?

A. Yes, he valued the land where

there was not a report from the classifier outside. I would like to state also that Mr. Ross received a silk hat from Mr. Boaz.

Q. Did Boaz make those presents about the time he was about the office there trying to buy school lands?

A. My belief is that it was awhile before the Harris county lands were sold. The mining stock was given at one trip and the silk hat given at another trip later.

Q. State in regard to the pricing of these lands when offered for sale, you say there was considerable stir, was there any inquiry made by the Commissioner or by his direction to ascertain the value of those lands?

A. The value, as I understood it, was already on them.

Q. That had been five or six years before had it not?

A. Yes.

Q. Was any inquiry made to obtain its present value?

A. I could not state.

Q. Not that you know of?

A. No.

Q. Do they always rely upon the values as fixed by the original classification, or was it the duty of the office to sell it at its present value?

A. Usually they sold it at the price marked on the books unless they were reclassified, and then the classifier fixed the price.

Q. Suppose a tract of land had been classified at \$2 per acre five or six years before that time, but afterwards it was ascertained to be worth \$10 per acre, would the office sell it at \$2 per acre?

A. I don't know of such an instance taking place; I don't know.

Q. Was it the habit of the office to make some reasonable effort to obtain the value and sell it at what it was worth?

A. I don't know; I could not say more than I have said.

Q. Were there no changes made in the report of the Harris county land prices?

A. There were some changes made in the report of Harris county lands, but I could not state when.

Q. How were they changed?

A. Some were changed from \$3 per acre to \$2 per acre.

Q. Who made that change?

A. I don't know who made the change.

Q. When was that change made?

A. I don't know when that change was made.

Q. Do you know whether or not there were any school lands in blocks in Chambers and Jefferson counties?

A. Yes, in both counties.

Q. Were they a continuation of the block in Liberty county?

A. Yes, either in Jefferson or Chambers county, I have forgotten which.

Q. Did the Commissioner put those lands on the market, and if there was any discussion about that, state what it was, and if they were not put on the market, state why?

A. They have been on the market all the time.

Q. As detached lands?

A. They were not on the market as detached lands, and are not now on the market as such.

Q. Was there anything said about that?

A. I could not state if there was an effort made. There were some forty or fifty applications made to buy them as detached lands, and these applications were rejected because the lands were not on the market as detached and isolated under section 22.

Q. This map shown you is a map of three counties, showing the way they join. The blue are sections of school land. State whether or not the mass of lands run over into the three counties?

A. This looks like a correct lithograph map of the three counties, and as I remember it that is the shape of it.

Q. Up to the time these lands had been put on the market in January of this year had they been on the market for sale at all; and if so, how?

A. They had been on the market under general instructions requiring settlement.

Q. Do you know what the ruling of the Commissioner was about the number of sections which might be purchased by one man under section 22?

A. I think the ruling was that each man could buy four sections in any county.

Q. Had that been the rule, or was the rule changed in that particular?

A. I don't know that the rule was changed. I know that parties bought more than that amount.

Q. Who bought more than that?

A. I could not state now, because I don't know positively.

Q. Do you know of any discussion between the Commissioner and parties about the quantity of land they might buy?

A. If I remember right some time about a year ago the Commissioner told Mr. Boaz that he could not buy more than four sections in one county. That was some time before these lands were put on the market.

Q. Was there any discussion between them about that?

A. I don't remember that there was, except that he told Boaz he could not buy more than four sections in one county.

CROSS-EXAMINATION.

Q. You say these instructions were general instructions?

A. Yes, they were general rules of the office as to one man buying four sections.

Q. That applied to everybody alike did it not?

A. Yes.

Q. You say there was a rule that one man could not buy more than four sections?

A. Yes.

Q. That applied to sections in one county did it not?

A. Yes. The rule was general so far as I know.

Q. It did not apply more to one than another did it?

A. No.

Q. Mr. Clark, you have spoken of the lands in Chambers and Jefferson counties, you say these lands were on the market under general instructions and required actual settlers?

A. Yes.

Q. How many of these lands were sold since you have been in the office?

A. I could not state. Recently there have been quite a number filed in Chambers county for actual settlers. There have been quite a number more; quite a large number to purchase under section 22. Far more than the number to purchase as actual settlers.

Q. Did the Commissioner reject those applications because he had not put those lands on the market for sale except to actual settlers?

A. Yes.

Q. Did he reject any proposition for actual settlers to buy?

A. Not that I know of.

Q. Did he reject propositions to buy from actual settlers in any cases in any counties?

A. No.

Q. When were the changes from \$3 to \$2 made?

A. I could not state, I know they have been made within the last year, and I think possibly within the past six or nine months. I don't know definitely.

Q. Has it not been the practice in the office to give actual settlers the preference to purchase any of the school lands?

A. Yes.

Q. Has it not been carried out?

A. Yes.

Q. Has it not been the practice under section 22 where lands were on the mar-

ket, if it was found that a settler was on the land, has it not been the custom to give him the preference?

A. Yes.

Q. Has not the office been strict about that?

A. Yes.

Q. These changes in the Harris county lands were made some time in the past twelve months, were they?

A. Yes.

Q. I will ask you, Mr. Clark, upon what information were these changes made, and if not made upon information that had reached the office in regard to the value of the land?

A. I don't know; because I don't know how the change took place.

Q. I will ask you if these lands in Liberty and Harris counties have not been classified and valued by a regularly appointed classifier, and if they were not put on the market at his valuation and official classification returned into the office?

A. I could not state; they were on the market at the same price before we went into the office. I could not state they were on the market at the same valuation before we went into the office.

Q. Have you ever examined any of the classifications of any of these lands?

A. Not especially. I have seen the classifications.

Q. I will ask you if all these lands have not been classified as dry grazing lands?

A. I know it is as to Harris, but can't say as to Liberty county.

Q. Is it not the official classification that is returned into the office, and does it not only show that to be dry grazing lands, but that a good portion of the winter it is under water?

A. I have never examined the classification, except the sales book. The sales book don't show.

Q. Have your means of information not been such as came under your observation as an employe of the office?

A. Yes.

Q. So far as your information has been these lands were dry grazing lands and covered part of the year with water?

A. I can't say about the water except what parties coming into the office state.

Q. You have spoken of the time when these gentlemen were in the office?

A. I don't remember of Mr. Boaz being in the office at the time.

Q. I will ask you if it is customary to see these gentlemen there frequently?

A. Yes.

Q. Have they always come on business?

A. Yes.

Q. Are they reputable business men?

A. Yes, so far as I know.

Q. I will ask you if these gentlemen were not transacting business openly, and nothing secret about what they were doing?

A. Yes. There was no secret.

Q. You spoke of a conversation that Boaz had with Ross about the Liberty county lands?

A. Yes.

Q. I will ask you if you know where they went when they went out of your office?

A. I don't know.

Q. Were they not talking openly about those lands as anybody else?

A. I think they were.

Q. Were they not talking openly about the lands in Liberty county, and discussing the question openly?

A. Yes.

Q. Was it not a fact that when they left they went to the Commissioner's office to see him?

A. I don't know.

Q. How long after that was it that you saw the Commissioner with them?

A. I could not state. About an hour afterwards.

Q. How were they discussing it—just as you and I are talking?

A. Yes; just like we are talking. Everything was open, and nothing hidden.

Q. You have spoken about Mr. Boaz giving Mr. Ross a silk hat. When was that?

A. I could not tell you when it was, because I don't know.

Q. About when?

A. I could not state that, from the fact that, as I understood it, Mr. Ross had the hat two or three weeks before I knew anything about it.

Q. Who told you about it?

A. Mr. Ross told me about it himself.

Q. Did he tell you to keep it a secret?

A. No.

Q. Was it not generally understood over the office?

A. Yes.

Q. Did not Mr. Ross tell you how Mr. Boaz came to give him the hat?

A. I could not state that. I can state that some time after that Mr. Ross told me how he came to give him the hat.

Q. Did not Mr. Ross tell you that Boaz gave him the hat on account of some friendship that Governor Ross had for Boaz?

A. Yes.

Q. Don't you know the fact that this hat had nothing on earth to do with the purchase of that land?

A. I don't believe Mr. Ross could be

induced to do such a thing on account of a hat.

Q. You said something about mining stock that Boaz had given some one in the office; what mining stock was it?

A. I don't know.

Q. Did you see the mining stock?

A. I saw the certificates.

Q. Where did you see it?

A. I saw it when Boaz handed it to them.

Q. Where was that?

A. In the school land room.

Q. Fix the date.

A. I can't do that.

Q. When was it?

A. It was some time between December and February.

Q. Was it after or before Christmas?

A. I don't know.

Q. Do you recollect when the Legislature met?

A. I do.

Q. Was it before the Legislature met?

A. I could not state the time.

Q. You say you saw it in the land office and saw Boaz give it to John McGaughey; he gave it to him openly, did he not?

A. Yes.

Q. Was any one else in the room?

A. I think all the boys were at their desks.

Q. What did Boaz say when he gave it to them?

A. He handed them the stock and said he wanted to make them a present of it.

Q. What mine was it?

A. I don't remember.

Q. What kind of a mine was it?

A. I don't remember. I think it was understood that it was a gold mine. I think Boaz sent a sample of the ore there.

Q. What was the value of that stock?

A. I don't know.

Q. Do you know whether it was worth anything or not?

A. I could not tell you that.

Q. Was it not openly done in the office and did not the boys make a joke of it when it was done?

A. So far as I understood it, it was received as not a very valuable present.

Q. Did you not consider that it was worth nothing?

A. Yes, I made the statement I did not think it was worth anything.

Q. Did he offer any to you?

A. No. He said he had a certificate of some size and that if he had it split he would give us some.

Q. They considered it a joke did they not?

A. I don't know what the stock is

worth and I did not consider it worth anything at the time.

Q. I will ask you if you recollect the circumstances of this kind, if Mr. Harris did not say something about preferring to take a cigar?

A. No; I do not.

Q. Did you not regard the stock as valueless and treat it as a joke in the office?

A. Yes.

Q. You spoke of the reclassification of some Harris county lands?

A. There was no reclassification.

Q. You spoke of the change in valuation of some of it?

A. Yes.

Q. Was that before or after the election?

A. I could not state. I don't remember when that change was made.

Q. Then you don't know whether it was made before November or not?

A. No. My impression is that it was in the winter some time, but I don't remember the time.

Q. When these lands were put on the market in Harris county and Liberty county, which were put on the market first?

A. The Harris county lands. Up to that time the land had been sold to actual settlers only without the attention of the Commissioner being called to it. There had been land in Harris county sold under section 22. All in the county except this especial block.

Q. These were outside sections, were they not?

A. Yes.

Q. Speaking of the time he was called upon to make a ruling, was not that the first time he had been called upon to make a ruling on this question?

A. I don't know. I think Mr. Boaz several months before tried to get those lands on the market under section 22 and the Commissioner would not do it.

Q. Who got those lands placed on the market?

A. I don't know who got them placed on the market. The Harris county lands were placed on the market before the conversation with Boaz.

RE-DIRECT EXAMINATION.

Q. You were asked about the Commissioner's ruling in respect to the matter; is it not a fact that so far as their being put on the market to actual settlers that the law puts them on the market?

A. Yes, when the land has been classified.

Q. In changing the market character of the land from its general character, and opening it up for purchase by others than actual settlers would require

some affirmative action on the part of the Commissioner, would it not?

A. It is usually the rule to notify the clerk before they are offered for sale.

Q. You say these lands prior to this time had not been opened up for sale under section 22?

A. Not since the present Commissioner has been in office.

Q. You say Boaz had tried to get him some months ago to open the Liberty county lands up?

A. I can't say.

Q. Boaz brought his samples of the mining stock to the office, did he?

A. Not when he gave them the stock. He expressed them the sample some time afterwards. There was only one sample.

Q. He did not have a sack of samples did he?

A. No.

Q. What size was the stock?

A. I could not say.

Q. The stock was in \$1000 dollar shares, was it not?

A. I could not say, the first I saw was for \$500 each. He had stock every time he came.

Q. He did not propose the gift and send the \$1000 share off and get it cut into two equal parts did he?

A. I could not say as to that.

Q. What size were the shares?

A. \$500 each.

Q. Do the fellows play those sort of jokes very often over there?

A. I don't know of any other jokes of the same character. As far as I know that is the extent of such jokes over there.

Q. Was a similar joke played on one of the clerks by a gentleman who was buying some timber land?

A. I only know by hearsay and not by statement made to me by the clerk himself. I do not know the value of the stock. I did not think it amounted to anything. I understood the face value to be \$500.

Q. Do you know anything about the sale of timber lands in Jasper and Newton counties; about their reclassification?

A. I don't think they were reclassified. I think the price of some of the timber was reduced.

Q. In reducing the price of the timber was the price of the land reduced or increased?

A. Increased, from the fact that the records show a section that would be at \$10 per acre, they show the timber worth \$9 and the land worth \$1. So on timber worth \$2 the land would be worth \$1, where the price was \$3.

Q. Would the total value remain the same?

A. I could not state.

Q. How were those prices on the timber on land in Jasper county reduced—were they reduced by the department?

A. Yes, by the office, so far as I know.

Q. Was any notice given the public of the reduction by notice to the Jasper county clerk?

A. The notice was given at the time the sales were made.

Q. Who bought them?

A. There was a part of them bought.

Q. Who acted as agent for the purchasers?

A. D. Call acted as agent for the purchasers.

Q. You say there were quite a number of sections of that kind bought?

A. Yes.

Q. Were the sections bought?

A. No, just the timber and not the land, except in one or two instances.

Respondent here asks the court to send for the record of the Jasper county lands.

Q. Do you know whether the department sent any one there to examine these lands?

A. They did not; that is, they did not send any one out of the office.

Q. Who examined the land in order to determine whether or not this price should be reduced?

A. Phelps.

Q. Did the department act upon the statements of anybody in regard to the reduction?

A. I think in most instances they acted upon the statements of a man by the name of Kelley.

Q. Was he employed by the department or by the parties who purchased?

A. It was understood that he was employed by the purchasers.

Q. Did the department pay him?

A. The department did not pay him.

Q. Was it not understood in the department that the purchasers paid him?

A. (This question was not answered.)

RECROSS-EXAMINATION.

Q. Where is your department?

A. In the school land department.

Q. Is that up stairs?

A. No, down stairs.

Q. McGaughey's office is upstairs is it not?

A. Yes, in the southeast corner room.

Q. Your information in regard to these classifications, etc., you got from the records, did you not?

A. Yes.

Q. Were these lands in Jasper county first classified as an official classification; Have you got them with you?

A. No.

Q. Do you give this information from memory?

A. Yes, sir.

Q. Then give it from memory.

A. They were classified in 1888.

Q. Can you state from memory the official classification of the entire county?

A. I can not.

Q. Where is that classification?

A. In the land office across the yard.

L. S. Ross, Jr., witness for the prosecution, being recalled, testified as follows:

Q. Find us the Harris county sections in those books. The books, as I understand you, is the book of original entry of sections of school land in Harris county. Under the head of remarks you make what entries?

A. Insert the name of the purchaser generally. Then, if a section is changed, remarks are made opposite the section.

Q. I find in one column the letters "D. C. T., chd." and "Section 22" in some places. What does that mean?

A. They refer to the section 22 of the act of 1887; that is, they can be sold as detached land.

Q. I notice these words are written in different inks and by different handwritings; how is that?

A. They were written at different times, by different clerks.

Q. How does it come they were classified at different times?

A. Well, the bulk of the classifications were made at once. Some of these sections are not in the blocks.

Q. I see some marked section 22 in different handwritings; how about that?

A. Well, those marked section 22 are the ones that were placed on the market in block 2, H. and T. C. Those marked section 22 were placed on the market last December.

Q. How about those marked "D. C. T., chd?"

A. All of those so marked were put on prior to that date.

Q. What was the difference in the date of those marked in black ink and those marked in red ink?

A. That I don't know.

Q. Whose handwriting are those marked in black?

A. The "D. C. T., chd." in black is John McGaughey's handwriting; that in red, marked "section 22." is my handwriting. "D. C. T., chd." in red, is Mrs. McKay's handwriting.

Q. Those entries, as I understand you, were not made at the same time?

A. No.

Q. How many different times did you make entries of section 22?

A. I don't know. All those in block 2

were made at the same time. Those that are marked section 22 I did all at the same time. The other indications that they were on the market to other than actual settlers were made prior to that time.

Q. Do you know why it was some of these sections in this block were put on the market as detached and others not put on the market?

A. No, not unless I see the sections.

Q. What about section 16, block 2, sold to C. D. Dillon?

A. I don't remember the circumstances about that.

Q. Section 18, block 2, sold to the same person—how about that?

A. I don't remember about them.

Respondent's counsel states that these are sections that have been ruled out.

Relator's counsel: The demurrer to the article was sustained, but the evidence as to the sale of these sections was admitted, not for the purpose of sustaining article 22, but as evidence of the sale of these lands.

Respondent withdraws objection.

Q. How about section 24, in block 2, sold to C. D. Dillon?

A. This, I think, Mr. John McGaughey made the memorandum on those sections, and my recollection is that he instructed me to award them.

Q. How about section 34 to C. D. Dillon?

A. That was the same way.

Q. Who is C. D. Dillon?

A. I do not know.

Q. Does he live in the State?

A. No, I think he lives in Iowa.

Q. Who was his agent?

A. I don't know that.

Q. Who brought his application up?

A. I don't know that.

Q. You would know the handwriting, would you not?

A. Yes.

Relator's counsel ask for an order to the Land Office from the court to send them here.

Q. I find over here Mr. C. D. Dillon for section 84; you say you don't know how they were placed on the market?

A. No. I was instructed by John McGaughey that they were all right.

Q. Who made "D. C. T., chd." in blue on the book?

A. I think I did.

Q. There is one made to Stafford for section 64, and one to Cuney for section 82, how did you come to make those entries?

A. My recollection is that I had personal instructions from the Commissioner to place those on the market. I don't know that it was for those two parties particularly, but he thought they

could be put on the market and sold as detached. The Commissioner did not instruct me to put them on the market to any particular individual, but just under section 22.

Q. Is it not a fact that an application from that individual came when the instructions were given?

A. I don't remember the date when I received those instructions, and can't say how long after the instructions came that the application was received.

Q. I find another in blue pencil over here to J. R. Churl, section 20, did you make that?

A. Yes.

Q. All of the sales of those lands are on these books are they?

A. Yes.

Q. There are none on the other books are there?

A. The sales were all transferred to these books.

Q. These sections marked in blue by you under section 22, you did not send any notice to the Harris county clerk, did you?

A. No, I don't think they did.

Q. The only method of knowing they were on the market were by these pencil letters you put on the book?

A. Yes.

Q. The same with respect to those markings that John McGaughey put on the back in ink; there was no notice sent of them, was there?

A. None that I remember of.

Q. Do you know how it came about that the Commissioner would come in and direct you to put only two or three sections of this land on the market as detached?

A. No, I don't remember any of the circumstances now.

Q. Is it not a fact that an application for purchase invariably followed very soon after you received these instructions?

A. I know it did in those instances.

Q. Were the prices of these lands changed at any time in Harris county?

By witness: Do you mean in block 2?

Answer by witness: No, I don't think they were.

Q. Had any of them been put at three dollars an acre at any time?

A. I think not.

Q. I notice two entries at \$3 per acre. They seem to have been reduced and put down to \$2 per acre—how about that?

A. Those were sold first under Mr. Hall as detached, in 1890, and forfeited for non-payment of interest, and the price was put at \$3 by Mr. Hall, and it appears now at the same price. I speak of section 18, in block 2, H. & T. C. It

appears to have been sold to Mr. Sheffer. There were no general changes in the price of lands, however. Those two instances are the only ones I remember of.

Q. Then you say you rejected applications for the Harris county lands?

A. J. D. Sedberry filed January 3, 1893, for sections 22, 24, 26 and 28, in block 4, Washington county.

Q. I see application by T. F. Taylor, filed Dec. 14, for sections 70, 72, 74 and 76, H. & T. C., marked "rejected; want notice from county clerk that the land is on the market." How about that?

A. That applies to this change.

Q. Taylor did not in fact get those same lands, did he?

A. That I don't know.

Q. Did he not file other applications?

A. I think so—after the county clerk was heard from.

Q. He knew at the time he filed those applications that the lands had been put on the market, and you notified him the cause of the rejection was that you had not received notice that the clerk had gotten your letter, was it?

A. I don't know if he was notified of that fact.

Q. Did not this entry notify him of that fact?

A. Yes; it did.

Q. Here is sections 52 and 54, applied for by W. Thompson, filed Dec. 15, 1892, and rejected for the same reason. Also application by Jas. Neil for sections 62, 78, 86 and 88, filed Dec. 14, 1892, and rejected for the same reason. Who is Jas. Neil?

A. I do not know him.

Q. Here is one by E. R. McLean for sections 30, 48, 58 and 68, filed Dec. 14, 1892, rejected for the same reason. One from F. M. Beaty, for sections 20, 22, 28 and 50, filed Dec. 14, 1892, rejected for the same reason. Here is one from F. P. McLaughlin for sections 32, 36, 46 and 60, filed Dec. 14, 1892, and rejected for the same reason. Here is one from McHenry Winburn for section 76, in block 2, rejected on account of previous application; and one by T. F. Taylor, filed Dec. 16 and rejected Dec. 17. It seems that you had already rejected Taylor's application on this section 76?

A. Yes, but on the sixteenth he filed again.

Q. Is it not a fact that certain parties here in town had ascertained that the department was going to put these lands on sale and they immediately filed their applications for them, and that the department rejected them, and stated that their reason was that they had not received notice from the county clerk that he had received their letter?

A. They did know.

Q. By what method did they find out?

A. They could have come into the office and ascertained by asking.

Q. Would you let persons know about these matters before you had the notice executed that the office had been in the habit of sending out?

A. Yes.

Q. What good did the notice do them?

Respondent's counsel: It occurs to us that this investigation is not on the line of the articles of impeachment, and is irrelevant and throws no light on the issue as to whether or not the respondent is guilty of the charges preferred against him. If it can throw any light, or the managers can show us what light this testimony throws, upon the respondent's actions, we have no objection, but until its relevancy is apparent it is a useless consumption of public time.

Question by chair: There is a charge that he colluded with others, is there not?

By respondent's counsel: Under that suggestion the respondent withdraws any objection.

Q. You state the fact to be that these parties had found out that these lands would be on the market and had applied for them?

A. Yes.

Q. How could they find out?

A. If they had come into the office and asked they could have found out?

Q. Was it the habit of the office to tell persons until they received the notice from the clerk?

A. I don't think the office ever tried to conceal it.

Q. What good did the notice to the clerk do, if you had already notified those here?

A. I don't know, except that the clerk had notice prior to the letter that they were only sold to settlers.

Q. You gave the clerk notice in order that the sales when made might be regular, did you?

A. Yes.

Q. Did not the fact remain that those about the office would have every advantage over the other people in purchase of the lands?

A. I suppose the persons in the office would have the advantage.

Q. As a matter of fact, in this instance, did they not have an advantage?

A. I think so.

Q. Did you not receive a telegraph message from the clerk of Harris county that he had received the notice?

A. Yes. I think some applications were placed on that day. We were waiting for this notice from the clerk.

After that notice was received there was no reason why they should not be sold.

Q. Did you not sell those lands to the same parties who had applied for them before that notice was received?

A. To some of the same parties, yes.

Q. Is it not true that they were largely engaged in the business of land speculation?

A. Some were and some were not.

Q. The parties to whom you sold lived almost entirely in Austin, did they not?

A. Yes.

Q. Their character in respect to being speculators was well known to the office, was it not?

A. I don't know.

Q. You knew it, did you not?

A. I knew some of the gentlemen personally.

Q. Who wrote out those applications?

A. I do not know.

Q. They were written out by the employees of the office, were they not?

A. No.

Q. The blanks were furnished by the office, were they?

A. Yes.

Q. Whose handwriting is on W. Thompson's application?

A. I do not know.

Q. Whose handwriting is on McLean's application?

A. I do not know.

Q. Is not the handwriting on F. P. McLaughlin's application like that on the two above named? Is not F. M. Beaty's like the others?

A. Yes.

Q. Whose handwriting is James Neil's in?

A. I don't know.

Q. Is not T. F. Taylor's similar to the above?

A. Yes.

Q. Is not McHenry Winburn's the same as the others above?

A. It looks so.

Q. You know the purchasers of those Harris county lands, don't you?

A. I know some of them. I don't know C. D. Dillon. He is a non-resident of the State.

Q. Did he not buy largely of public lands?

A. I don't know.

Q. Who was his agent here.

A. I don't know.

Q. Do you know F. M. Beaty, and where does he live?

A. Yes; he lives in town.

Q. Do you know E. R. McLean?

A. Yes.

Q. Where does he live?

A. He lives in Austin.

Q. Do you know F. P. McLaughlin?

A. Yes.

Q. Where does he live?

A. He lives in Austin.

Q. Do you know Stafford?

A. No.

Q. Do you know where he lives?

A. At Houston.

Q. Where does Cuney live?

A. In Houston.

Q. Who was present when the Commissioner ordered you to put the block of these lands on the market?

A. John McGaughey and myself, I believe.

Q. Where did it happen?

A. In the Commissioner's room. There were two other clerks there, but they were not taking part in the conversation.

Q. Did you not protest against putting these lands on the market?

A. I did in this way; I said that if those two sales could be made to Mr. Boaz, I did not think they could be properly made unless they were all put on the market.

Q. Did he tell you to put only the two on the market?

A. I did not understand him, Boaz, to say put only his two sections on the market, but Boaz said that McGaughey told him that I could sell these two sections to him.

Q. Did you not suggest to him that if these two sales were made that the whole block would have to be put on the market?

A. Yes.

Q. Did Boaz get the sections he wanted?

A. Yes.

Q. Had not Boaz been after these lands for sometime?

A. I don't know. That is the first I knew of it.

Q. Did he not complain to the Commissioner that the Commissioner refused to sell him some, and that he thought the Commissioner should sell him some of those lands?

A. No, I did not hear the conversation.

Q. Did you not tell the Commissioner that you did not think this land could be sold as detached?

A. I don't remember.

Q. When Boaz applied for them, you recognized the fact that they were not for sale as detached land at that time, did you?

A. Yes, and I went to the Commissioner for that reason.

Q. Now, about the Liberty county lands; were you present at the conversation between the Commissioner and Boaz?

A. Yes.

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Q. Find the Liberty county sales on the book, Mr. Ross.

A. They are on page 82.

Q. I notice in your sales of the Liberty county land, that you did not write anything in your books about detached and section 22, in some instances.

A. I made a note at the top to apply to all.

Q. What is that notice?

A. "The unsold lands in this county changed to section 22, and the county clerk notified January 20, 1892."

Q. What is that pencil memoranda at the top?

A. We were getting up a statement, and this pencil memorandum was put there for convenience.

Q. When was that entry made?

A. That entry was made on the 20th of January. Those marked section 22 were placed on the market by Mr. Hall. I was clerking in the same department at that time. They are in a different part of the county, I suppose.

Q. They seem to have been timbered sections?

A. Yes.

Q. On yesterday you stated, that when the Harris county sales were mentioned it was the first time the question had been raised in the office about putting blocks of sections for sale on the market as detached?

A. Under the present Commissioner that was the first I remember of.

Q. Did you not have something similar in Wharton and Fort Bend counties?

A. My recollection is, that Wharton and Fort Bend counties were made after this.

Q. The four sections down there were sold to Mr. Schwartz, were they?

A. Yes.

Q. Who instructed you about the sale of those sections?

A. I believe Mr. John McGaughey said that they had been placed on the market and could be sold. There was a notice sent out. I had no instructions with regard to placing them on the market. The first I knew was when the applications were presented at my desk. I was instructed to sell to Mr. Schwartz, on those applications.

Q. Is Mr. Schwartz related to anyone in that department?

A. Yes. He is the father-in-law of Mr. Harris. I think he bought four sections in Wharton and two in Liberty county.

Q. Did he ever buy any in Harris county?

A. I don't think he did.

Q. Were you not requested just to quietly close those sales to Mr. Schwartz, or words to that effect?

A. No. No request of that kind was made.

CROSS-EXAMINATION.

Q. You say those applications of Mr. Schwartz came to you in due course and were acted on by you?

A. Yes.

Q. You say there was no collusion or anything about it at that time, and that it was a plain application?

A. Yes. I saw nothing that would make me think there was any collusion. They were presented to me by Mr. Harris, and he handed them from over Mr. John McGaughey's desk. I think John McGaughey was there at the time. They were passed over from one desk to another. We have blank applications to be filled out for the use of parties wishing to buy school lands. When the applications come we act on them.

Q. Is it not the duty of the Commissioner to furnish these blanks to those who want them?

A. Yes.

Q. How long had those lands been on the market for sale before Mr. Schwartz bought them?

A. Several years; I don't know the exact date they were placed on the market.

Q. You have been asked about the application of T. F. Taylor; do you know where he lives?

A. In Austin.

Q. That is one of the applications that the gentleman called your attention to that was rejected, was it?

A. Yes.

Q. He is not an actual settler on the land, is he?

A. No.

Q. Did he claim to be?

A. No.

Q. This is not the rejection of the application of an actual settler, is it?

A. No.

Q. How about the application of Wm. Thompson?

A. I don't know him; but I believe his postoffice address is in Austin in his application.

Q. Then he was not an actual settler, was he?

A. No.

Q. He did not apply as an actual settler, did he?

A. No.

Q. How about the applications of James Neil and E. R. McLean?

A. Mr. McLean lives Austin.

Q. Neitaer claimed to be actual settlers, did they?

A. No.

Q. How about Mr. F. M. Beaty. Where does he live?

A. He lives in Austin.

Q. Did he claim to be an actual settler?

A. No.

Q. Where does Mr. McLaughlin live?

A. He lives in Austin.

Q. Did he claim to be an actual settler?

A. No.

Q. Where does P. C. Pate live?

A. I don't know him.

Q. Was his the application of an actual settler?

A. I don't know, unless I see the application.

Q. Where does Mr. MacWinburn live?

A. He lives in Austin, but did not apply as an actual settler.

Q. There is no application in all these that are applications of actual settlers?

Q. All of those you name are residents of the city of Austin, are they?

A. Yes.

Q. Has it not always been the policy of the Land Office, since Mr. McGaughey has been there, to favor actual settlers as against other parties?

A. Yes.

Q. Has it not been the policy of the office, outside of that, to treat everybody alike so far as it could be done?

A. Yes.

Q. Speaking of these different lands in Harris and Liberty counties, I will ask you to examine your book, and state if it is not a fact that nearly all of these lands have been classified as dry grazing lands?

A. Yes, sir; with very few exceptions in the county.

Q. Have not some of them been reported through the Land Office as wet and covered with water a good portion of the year?

A. I think is reported in the original classification of some of the lands.

Q. What do you mean by dry grazing lands?

A. No running water on it. It don't refer to lands with water on it in the winter. It must be running water.

Q. I will ask you if such lands are fit for actual settlers to live on, and are they so considered?

A. I think it is generally understood that they are not fit for settlers.

Q. Is there not a different classification for agricultural lands?

A. Yes.

Q. They are classified differently, and are classified as such, are they not?

A. Yes. These grazing lands are supposed to be fit only for grazing purposes.

Q. I will ask you if your book there, as gone over by the relators, does not show that a number of these lands have been sold previously and forfeited back to the State?

A. Yes; there are quite a number in that county that have been forfeited and put back on the market.

Q. Just glance over and see the proportion; are there not quite a large portion of them that were previously sold and forfeited?

A. Yes; there are quite a number; I suppose 30 sections.

Q. How many are there in both Harris and Liberty counties?

A. I don't know how many in Liberty, as I have not the book.

Q. Are there not quite a number of them?

A. Yes.

Q. I will ask you if you have examined and compared the map of Medina county with the map in the Land Office?

A. I have not compared it yet.

Q. Did you ever compare it?

A. No.

Q. Have you examined any maps at all?

A. No.

REDIRECT EXAMINATION.

Q. In the application for Liberty county I notice four blocks for purchase by actual settlers, rejected, Frank Humphries, Thompson, Marshall and O'Connor. How about them?

A. This application of F. Humphries for sections 34, 36 and 38, as he made an application on the same blank for all three sections, and, of course he could not be an actual settler on all three of them, and he was notified that he must first make application for grazing lands, if he wanted three sections; if the land is within a radius of five miles he could get it. There is the application by Marshall for section 24, received April 19, and was rejected on account of a previous sale to G. Wilgus.

Q. Did Marshall live at Houston?

A. Yes. W. G. Thompson filed April 19, 1893, and was rejected for the same reason as Marshall. The application of O'Connor for sections 1020 and 1132, was rejected on account of a previous sale to H. G. Thompson.

Q. Did he live in Houston?

A. I don't know. My recollection is that he lives in Houston.

Q. Was not O'Connor's application made before you sent notice to Liberty county?

A. No; it was made afterwards on April 13, 1893.

Q. Here are nine applications from citizens of Liberty county for these lands, as detached lands, were they all rejected?

A. B. F. Cameron and Swilley were rejected because the land was sold to C. E. Anderson on January 18, 1893. Their application is dated January 20, 1893. Application by S. A. Spencer for section 20, was rejected on account of the treasurer having been notified of the application of J. G. Duffield. He is my father-in-law. Application of Mr. Swilley was filed April 11; treasurer had been notified of the application of C. E. Anderson. This gentleman has not yet been written to about his application. The Commissioner told us to hold these matters up. The indorsement has been made on the application.

Q. Where does Mr. Anderson live?

A. In Austin. Application by W. S. Ivey, for north half of section 32, rejected on account of previous sale to B. A. Pessels.

Q. Who is Pessels?

A. I do not know. J. M. Cooper, for the south quarter of the north half of section 33, rejected on account of previous sale to B. A. Pessels. Application for section 4, for W. F. Swilley, rejected on account of previous sale to J. G. Duffield. Application of Mr. Spencer, for section 28, rejected on account of sale to R. L. Thielau.

Q. Who is R. L. Thielau?

A. He lives in Austin, I believe. Application by S. A. Spencer, for section 30, was rejected on account of previous sale to A. C. Gillespie.

Q. Who is A. C. Gillespie?

A. He is a physician at College Station. Application of Swilley, for section 2, rejected on account of sale to Duffield.

Q. Were there any other applications from College Station?

A. I believe there were two. One by Mr. Adriance and one by Mr. Carter.

Q. Was there one by Mr. Byser?

A. I don't know, I think so.

Q. Is he steward down there?

A. I don't know.

Q. I notice a great quantity of applications here from E. Friedenhaus and Mary Friedenhaus. How about these?

A. Mr. Friedenhaus filed applica-

tion in his own name for certain sections and in his wife's name for certain sections, and the Commissioner instructed us not to sell to his wife, and said that he could buy, but that his wife could not buy. The applications you mention are his and hers.

Q. He applied for many sections, did he not?

A. Yes. You can count his applications.

Q. I notice some indorsements in pencil. What are they?

A. D. G., is a classification, and 2 is price, O. K., means it has been examined. Abst. stands for abstract. That is always examined to see if the land has been previously sold under other acts, then comes the application, classification and sale? The map is also examined. These are made for the purpose of getting the information, and for convenience.

Q. I notice quite a number of applications by Covert. How did it come about?

A. I suppose their idea was to keep someone else from getting it ahead of them, and to keep their applications alive.

Q. With respect to the questions asked you about the Wharton county land, is it not true that Harris, when he brought you that application, told you to go ahead and sell these lands on the dead quiet to Schwartz?

A. He made some remark of that kind, and as late as yesterday I asked him about it, and he said I misunderstood him. I asked him about it yesterday and he said he did not say that.

Q. You have pretty good hearing, haven't you?

A. Yes; I think he must have said something of that kind. I understood him to say that.

RE-CROSS EXAMINATION.

Q. You had no authority to prevent men from filing applications, had you?

A. No.

Q. They filed applications whenever they wanted to, didn't they?

A. Yes.

Q. Was the Commissioner there at the time Harris said this?

A. No.

Q. Did you not put these lands on the market, believing that you had a right to do so under the law?

A. I had nothing to do with putting them on the market. When I received the application I asked John McGuaghey if these lands had been put on the market, and he said they had.

Q. There was no other application for these lands, was there?

A. No.

Q. Who made the award?

A. I awarded them.

Q. In the applications of Cameron and Swiley that were made, you say they were rejected for the reasons stated on the back of each application?

A. Yes; in that instance there had been a sale to Mr. Anderson.

Q. In each case, don't the record show the reason why the sale is not made?

A. Yes, it is usually indorsed on the application, but sometimes I tell the clerk not to put it on the application, but the letter always gives the applicant the reason of his rejection.

Q. Is not the reason of the notification to him is that he may know the reason and file another application?

A. A copy of the letter is always kept in the office.

Q. Are those letters open to the public?

A. I don't know.

Q. Are not these books examined every day by anyone who wants to examine them?

A. Yes.

Q. Is not each of these applications which have been acted on, acted on in accordance with the rules of the office?

A. Yes.

Q. Taking the application of Frank Humphries, you say that is rejected, and you give the reason on the back of the application why it was rejected?

A. Yes, I indorsed "must have been an actual settler, and must have grazing blanks if the sections are within five miles of your section, and your application will be considered."

Q. Did you afterwards grant that application?

A. Yes, Mr. Humphries afterwards got the land that he applied for.

Q. Take the application of Mr. J. P. O'Connor. Do you know him.

A. No.

Q. Do you know where he lives?

A. No.

Q. State why that was rejected.

A. That was rejected on account of previous sales to H. F. Thompson.

Q. Had the land been regularly sold to Mr. Thompson?

A. Yes.

Q. Was Mr. O'Connor so notified of that fact?

A. Yes.

Q. This application of Mr. W. G. Thompson's for section 22, in Liberty

county, I will ask you if that is not one of the sections inside of the pasture of Mr. Davis?

A. Yes.

Q. Did you hear Mr. Cameron testify here?

A. Part of it.

Q. Then no application was made by him as an actual settler until this application filed on the 17th day of April, 1893?

A. Yes; that is the first application.

Q. Had not the land been sold to Mr. Wilgus?

A. Yes.

Q. Did not this application come in after this controversy came up?

A. Yes.

Q. Was that before the charges were preferred against the Commissioner?

A. Yes.

Q. Do you know Mr. W. G. Thompson?

A. I don't know him, and never heard of him until or before this matter came up.

Q. I will ask you through whom the application of Richard Marshall was made?

A. It was made through Mr. E. M. House, of Austin.

Q. Where does he live?

A. Mr. House lives at Austin.

Q. What was the date of the application made by Mr. Marshall?

A. April 15, 1893.

Q. That was after this controversy came up, was it?

A. Yes.

Q. Was it after the land had been sold?

A. Yes.

Q. Will you refer to the book of Liberty county lands, and I will ask you if there are still lands in Liberty county, priced at \$3 per acre unsold?

A. Yes. We have some sections; they are timber lands.

Q. About how many of them?

A. About a dozen.

Q. They are still on the market, and no purchasers applying for them, are they?

A. No; there have been no applications lately.

Q. Have there been any applications lately to buy those adjoining lands in Chambers and Jefferson counties?

A. Yes, for some lands in Chambers county.

Q. In what portion of Chambers county?

A. I can't tell what portion of the county.

Q. When were they made?

A. Within the last month.

Q. How many of them are there?

A. By two or three purchasers, covering eight or ten sections.

Q. Here is a list of Harris county applicants. Please examine it and state the reasons why they were rejected.

A. John Oak, section 4, Washington county railroad, in Harris county, rejected for the reason application was not made on the proper blank.

Q. How is that land classified?

A. As dry grazing.

Q. I will ask you if in any case you have ever rejected anybody's application which came in according to law?

A. No.

Q. If any preferences were ever given, it was in favor of the actual settler, was it?

A. Yes.

Q. You say the Commissioner has been very particular about that, has he?

A. Yes.

RE-DIRECT EXAMINATION.

Q. Please state to me an instance in which a greater preference has been given to the actual settler than the law gave him.

A. I mean that where a section has been applied for as detached, and applied for by a settler, the office had always given him the preference.

Q. Under certain circumstances the law would give him a preference, would it not?

A. Under some circumstances it would, and under some it would not.

Q. Do you know an instance?

A. I believe there was one section in Fort Bend county that had been sold to Mr. Boaz, and afterward applied for by an actual settler. It was applied for by a man who made oath that he was a settler there and had improvements on the land.

Q. Did not the Commissioner hold up his application in suspense and notify Boaz to effect a compromise?

A. I don't know if the letter was written that way or not, but the ruling of the office was always to give a party notice before cancelling his application. I don't know if we notified him he had better compromise with the settler unless I see the correspondence.

Q. Read this letter.

Witness here reads the following letter:

GENERAL LAND OFFICE,
AUSTIN, TEXAS, Feb. 6, 1893.

David Boaz, Esq., Houston, Texas.

DEAR SIR:—This is to notify you

that unless you make some compromise with R. T. Carroll "at once," as to the section of land in Fort Bend county, your file will have to be cancelled. We call your attention to this matter from the fact that you wrote us you had compromised the matter, when we have just received a letter from Mr. Carroll's attorney asking us to take action in the case. Attend to this promptly. Respectfully,

W. L. MCGAUGHEY,

(C). Commissioner.

HOUSTON, TEXAS, April 5, 1893.

The section was bought by me and deed or award card passed, but afterward cancelled by the Commissioner.

D. BOAZ.

Q. You were asked about the application for the purchase of the other tracts of this mass land that extended into Chambers county?

A. Yes.

Q. Was not application made for all of these lands about the 26th of January?

A. Yes.

Q. For how many sections?

A. I suppose fifty or sixty.

Q. Were they not rejected because the land was not detached and isolated?

A. Yes.

Q. They were part of the same block, were they?

A. Yes.

Q. These applications were made by parties in Chambers and Jefferson counties, were they not?

A. Yes; by parties in that section.

RE-CROSS EXAMINATION.

Q. These applications, you say, that he asked about in Chambers county were made on January 26, were they?

A. Yes, I think that was the date.

Q. Was not the reason for rejecting those that Chambers county had not been put on the market under section 22?

A. Yes.

Q. Were not a great many of those applications from Houston?

A. I do not know, but they were from that part of the country.

Q. These were not applications of actual settlers, were they?

A. No.

W. G. Thompson, witness for the prosecution, having been duly sworn, testified as follows:

Q. Mr. Thompson, where do you reside?

A. At Houston at present.

Q. Where have you been living?

A. On section 22 in Liberty county, a short time ago.

Q. What were you doing out there?

A. I was making improvements on that section of land?

Q. For what purpose were you on that section?

A. For the purpose of cultivating the land and making it my home.

Q. Did you make any offer to purchase that section?

A. Yes; I sent in my application.

Q. Did you have any communication with any officer of the government prior to sending in your application?

A. I did through my friend, Mr. Marshall; I communicated with the county clerk through my friend.

Q. When was that?

A. That was last summer.

Q. Did you make arrangements to improve after that?

A. Yes; we put in a bill for lumber and the mill was burned down, and we were detained on that account.

Q. You afterwards made formal application to the Land Commissioner to purchase, did you?

A. Yes.

Q. Did you succeed in purchasing the land?

A. He stated that the land was not on the market and had been sold.

Q. To whom had it been sold?

A. The Commissioner had sold to Mr. Wilgus.

Q. Is he living on the land?

A. No.

Q. Did he ever live on the land?

A. No.

Q. About what is the value of that land?

A. I consider it worth not less than \$5 per acre.

CROSS-EXAMINATION.

Q. Mr. Thompson, where are you from?

A. From North Carolina.

Q. How long since you came from there?

A. I first left the State six years ago. I am from Kentucky to Texas.

Q. How long since?

A. Last November a year ago.

Q. Where have you resided since you came here?

A. The greater portion of the time in Liberty county.

Q. What time did you go to Liberty county?

A. I went to Liberty county about the 1st of January, 1892.

Q. Where did you reside after you went to Liberty county?

A. I was for quite a while camping on the Trinity river.

Q. What was your business?

A. I was engaged with another gentleman trying to raise a sunken steamboat on the river.

Q. What was the name of the other gentleman?

A. His name was Richie.

Q. What time did you get through there?

A. In May, 1892.

Q. Where did you go then?

A. After remaining some little time in Dayton, I went to Tennessee.

Q. How long did you remain there?

A. The greater portion of the summer.

Q. What business were you engaged in in Tennessee?

A. Settling up some unfinished business in Dayton, Tennessee.

Q. Where did you live after you came back to Liberty county in October?

A. I stopped at Mr. Davis's.

Q. What business did you engage in at Davis's?

A. None whatever.

Q. How came you to go to Mr. Davis's?

A. I was personally acquainted with him, and when I came back I called on him and he invited me to stop with him until I could get out on the land. I think I went to Mr. Davis's on the 5th of October.

Q. Did you go as his guest?

A. Yes.

Q. How long did you remain as his guest?

A. Until, I think, about the first of December or middle of December. I remained there October, November, and part of December as his guest.

Q. Where did you go from there?

A. I went from there to Houston.

Q. How long did you remain there?

A. I remained until the 1st of last April. I was back and forth from there to the ranch.

Q. Were you living at Houston from the first or middle of December until the first of April?

A. Yes.

R. What business were you engaged in in the city of Houston?

A. I was engaged with Mr. Davis in his oil business.

Q. Were you in his employ?

Q. What wages were you getting?

A. That was not decided on. We had no special agreement. I had a general agreement with him that he would make it satisfactory.

Q. On the 23rd day of January you were living in Houston, were you not?

A. Yes, sir.

Q. Then you were not living on this

land as an actual settler, on the 23rd day of January?

A. No; because there was nothing to live in.

Q. There was not even a tree on the land, was there?

A. No.

Q. Not even a tent, was there?

A. No.

Q. No work had been done on the land, had there?

A. No.

Q. What time did you go to work on this land? Did you ever live on the land?

A. Yes.

Q. At what time?

A. I don't exactly remember when I first moved out there. Some time about the 1st of April.

Q. Where did you move from?

A. From Houston.

Q. Who advised you to move out there?

A. No one.

Q. Did not Mr. Davis advise you to move out there?

A. No. I know enough of the requirements to know that I had to move out there.

Q. Who told you the land was there?

A. Mr. Davis.

Q. That land is in Mr. Davis' pasture, is it not?

A. Yes.

Q. He has a fence around it, has he not?

A. Yes.

Q. You were in Mr. Davis' employ, were you?

A. Up to April 1.

Q. Did you not go from his employ at Houston right on the land?

A. Yes.

Q. Did you not go out there and try and save that land for Mr. Davis?

Q. Have you ever had a settlement with Mr. Davis?

A. No.

Q. Who paid for that lumber?

A. It is not paid for.

Q. Who bought it?

A. I did.

Q. Who engaged it?

A. I did.

Q. Did not Mr. Davis engage it?

A. No.

Q. Did he not speak for it in January?

A. No.

Q. Did he not tell you where you could get it?

A. No.

Q. Did he not talk to you about the lumber?

A. I happened to know where he got his lumber.

Q. Did they not look to Mr. Davis to pay for that lumber?

A. I told him to make out his bill and I would settle it. He has not sent the bill.

Q. Where do you live now?

A. I am from Houston here, but my personal effects are on the land.

Q. How long had you been in Houston before you came here?

A. I had been in Houston a week.

Q. Where do you live in Houston?

A. I live at Mr. Davis' residence in Houston.

Q. How many nights have you slept on that land?

A. Only one night, but I have been on the ground a great deal. I was not in shape to sleep there.

Q. Had you cooked and eaten there?

A. Yes.

Q. When was that?

A. It was, I think about the 5th or 6th of April. I don't remember the exact date.

Q. During the week you remained at Houston before coming here were you still working at the oil business?

A. Yes. I was not doing any work, but I went to the office and looked the mail over.

Q. Did you answer the mail?

A. I left the mail unanswered.

Q. Were you getting any wages for your work?

A. I don't know. I suppose I will.

Q. You left the letters unanswered until your return did you?

A. Yes.

RE-DIRECT EXAMINATION.

Q. What explanation did you start to make?

A. The explanation I started to make is this: For some time we had had part of the lumber outside of the railroad there, and, not having the entire amount, we had not hauled it on the land. We had the lumber there some two or three months, and were waiting to get the lumber to build.

RE-CROSS-EXAMINATION.

Q. Whose mill was that from which the lumber came?

A. Cress & Hemlock.

Q. When did you first know that the land was there?

A. About a year ago now.

Q. Why did you wait so long?

A. I went home to make my arrangements to put up the building and pay for it.

Q. Why did you not go as soon as you got back?

A. As I stated, the mill got burned

and we could not get our lumber shipped out.

Q. What day did the mill burn?

A. I don't remember; in the fall some time.

Q. The land is on the inside of the pasture, is it not?

A. Yes.

Q. You and Mr. Davis are still on good terms, are you not?

A. Yes.

Q. You are still with him in the oil business, are you not?

A. Yes.

Q. Did you ever notify the Commissioner of the General Land Office that you were claiming that land as an actual settler until this paper was sent in on April 16.

A. I did not. I thought all that was necessary was to apply to the county clerk of Liberty county.

Q. Did you make a written application to him?

A. No; I was not an actual settler at the time. I spoke to him through Mr. Marshall and he told us what the requirements were and that it would take some improvements.

Q. Are you a married man?

A. No; I am single.

Q. How much lumber did you haul out to that place?

A. About 2000 feet.

Q. Did you haul it?

A. No.

Q. Who hauled it?

A. Different parties.

Q. Whose wagons hauled it?

A. I hired a man who had an ox team to haul some of it.

R. W. Marshall, witness for prosecution, having been sworn, testified as follows:

Q. Where are you living?

A. In Houston.

Q. Where have you been living.

A. I have been living in Houston with the exception of about ten days.

Q. Do you know anything about some sections of land in Liberty county, in Mr. Davis' pasture, for which you made application to purchase?

A. Yes.

Q. Tell the court what your purpose was in making the application? and what your intentions were?

A. I made application in June, I think, to the county clerk of Liberty county, Mr. Cameron. I made it because I wanted to secure the land, and I went over there to find out what I would have to do, and I went back and got Mr. Simpson, a merchant of Dayton, to order the lumber for me. He got 1000 feet and the mill burned.

And I went to work for the National Oil Company, until about the 1st of April, and I went out to put up the house.

Q. Why had you delayed in putting up the house.

A. We could not get the lumber. I never abandoned my idea of settling on the land.

Q. Did you begin your improvements as soon as you could under the circumstances?

A. I made formal application to Mr. Cameron, and I afterwards made application to the Commissioner.

Q. Was the land awarded to you?

A. No. It had been sold to someone else.

Q. To whom was it sold?

A. I think it was sold to Mr. Wilgus.

Q. What is that land worth?

A. I don't know; if I had gotten it I would not have sold for less than \$5 per acre.

CROSS-EXAMINATION.

Q. You say you would not have taken less than \$5 per acre if you had had gotten it?

A. Yes.

Q. Were you not trying to get it to sell?

A. No. I wanted it for fruit.

Q. Where are you from?

A. I am from Kentucky.

Q. What part of Kentucky?

A. Central Kentucky.

Q. How long have you been here?

A. I have been here eighteen months.

Q. Have you any profession?

A. I have been a merchant all my life.

Q. You have never done any farming, have you?

A. Not since I have been grown.

Q. You have always been engaged in the mercantile business, have you?

A. Yes.

Q. What point did you come to first in Texas?

A. I first went to Velasco when I came to Texas, and I remained there till Christmas of year before last.

Q. What business did you engage in at Velasco?

A. Nothing. I was there a month or more.

Q. Where did you go from Velasco?

A. To Houston.

Q. How long did you stay there?

A. I staid there two or three weeks.

Q. Then where did you go?

A. I went to Dayton and went in business there with a gentleman by the name of Powers.

Q. What time was that?

A. We began on the house in January, 1892.

Q. How long did you remain there?

A. I was there until he died, in March or April. We sold out to Simpson.

Q. From then until August what did you do?

A. I staid there and collected up what matters we had out. In August I went to Houston.

Q. What business did you engage in there?

A. With the National Cotton Oil Company.

Q. You have been there ever since August in Houston engaged with the National Oil Company, have you?

A. Yes.

Q. Where have you lived ever since you went to Houston and went into the oil business?

A. I have been living with Captain J. W. Davis.

Q. You have boarded there continuously while in Houston, from that time to this?

A. Yes.

Q. Are you a married man?

A. No; I am a single gentleman.

Q. Do you pay your board?

A. Yes.

Q. Up to this time?

A. Yes.

Q. You kept all your affairs and effects at Davis's and they have been there, have they?

A. I took some to Dayton.

Q. When was that?

A. About the 1st of April.

Q. How much did you take out there?

A. A suit or two, and trunk and bed clothes?

Q. Did you break up any of the land?

A. No.

Q. Did you take a gun or a dog?

A. No.

Q. Did you make any preparation for a crop?

A. No.

Q. Did you have a wagon and team?

A. No; only those I hired.

Q. Did you have any horse, or implements or harness for plowing?

A. No.

Q. You prepared yourself with nothing of that kind, did you?

A. No.

Q. Was not your real intention in going out there to secure this land?

A. Yes.

Q. Did you not leave the larger portion of your goods and effects at Mr. Davis's?

A. Yes.

Q. Did you not leave your trunk there?

A. Yes; I left one there

Q. Did you not leave your room back there, that you occupied?

A. I don't know about that.

Q. How long were you out there on the land?

A. I guess I was out there about ten days.

Q. How many nights did you sleep there?

A. One night.

Q. Where did you sleep the balance of the time?

A. I slept at Simpson's, Pruitt's, and other places.

Q. Did you hunt any?

A. I hunted in the day time, and stayed on the ranch some. I did not sleep at Davis's ranch.

Q. What were you hunting?

A. I was hunting squirrels.

Q. Were you plowing the ground?

A. No; I did not want it plowed up; I wanted it for fruit.

Q. Whose gun did you have?

A. I had Pruitt's gun.

Q. Did you have any cooking utensils with you?

A. Yes; we took frying pans and skillet, and a lot of dishes.

Q. Whose were they?

A. Mr. Thompson's and mine.

Q. Whom did you buy them from?

A. I don't remember the firm's name.

Q. Where did you buy them?

A. In Houston.

Q. Did you and Mr. Thompson sleep together?

A. Yes.

Q. Whose section did you sleep on?

A. We slept on his; my house was not ready. I never did sleep on my section; I was there on it though.

Q. You had no way fixed except to sleep out of doors?

A. No. I had not gotten my house completed.

Q. I will ask you if you ever made known to the Commissioner of the General Land Office that you wanted that land as an actual settler until you made the application through Mr. House on April 15, of this year?

A. I think I wrote him to send me some blank applications.

Q. When was that?

A. I don't remember when it was. It was shortly after April.

Q. Are you acquainted with Mr. House?

A. Yes. I have met him since I have been here.

Q. How came you to write to Mr. House?

A. Mr. Davis told me to write to him.

Q. How far is it from Houston out to the land?

A. About 30 miles.

Q. Who first told you about the land?

A. I don't remember.

Q. Was it not Mr. Davis?

A. It might have been.

Q. You work for Mr. Davis, don't you?

A. I never have been in his employ. I board at his house. I am still with the National Oil Company. That is not Mr. Davis' company.

RE-DIRECT EXAMINATION.

Q. Do you know Mr. Wilgus?

A. No.

Q. Did you meet him on that land?

A. No.

Q. Has he any house out there?

A. No.

Q. Has he any gun out there?

A. No.

Q. Did you see any of his traps out there?

A. No.

Q. Did you see any effects of his being out there?

A. No.

Q. What have you done on that land?

A. I have begun the construction of a house out there.

Q. Are you having it completed?

A. No.

Q. Mr. Thompson had his about finished, had he?

A. Yes. He had it up, and part of it before Mr. Wilgus enjoined us from having the houses completed.

Q. The only evidence of Mr. Wilgus being there was that he enjoined you and Mr. Thompson from proceeding, was it?

A. Yes.

Q. You made your application expecting to make settlement there, did you?

A. Yes.

Q. Did you know anything of Mr. Wilgus wanting to buy this land when you made application?

A. No. When I first made application I did not know any one else wanted to buy it.

Q. You did not want it to sell to Friedenhaus and Wilgus, did you?

A. No.

RE-CROSS-EXAMINATION.

Q. Wilgus brought a suit against you, did he?

A. Wilgus brought an injunction

suit against me, enjoining me from going ahead.

Q. When was that?

A. That was about April 15.

Q. Did the court grant the injunction?

A. Yes; the case is still pending. There is litigation between Wilgus and me as to who has the prior right.

Q. Mr. Davis is president of the oil company that you are connected with, is he not?

A. No; I am with the National Oil company, and his company is now the J. W. Davis Oil company.

Court adjourned to 3 p. m.

AFTERNOON SESSION.

Court met at 3 p. m. pursuant to adjournment, with Lieutenant Governor Crane presiding.

The board of managers on the part of the House of Representatives desire to tender an additional article of impeachment.

Said article is read by the clerk, and is as follows:

ARTICLE OF IMPEACHMENT.

Additional article adopted and exhibited by the House of Representatives in the name of themselves and all the people of Texas against W. L. McGaughey, Commissioner of the General Land Office of the State of Texas, in maintenance and support of their impeachment against him for crimes and misdemeanors in office; and for the violation of the Constitution and laws of the State of Texas and of the duties of his office:

Art. 26. That the said W. L. McGaughey, Commissioner of the General Land Office, did, in Travis county, Texas, on or about the 24th day of March, 1893, fraudulently attempt to procure from William Bramlette, chief clerk of the General Land Office, a false certificate in writing to a certain map of Liberty county, Texas, said certificate in words and figures substantially to-wit:

I, William Bramlette, chief clerk of the General Land Office, hereby certify that the sections marked "blue" on this map, were, when sold, detached and isolated from other public lands.

Given under my hand and seal of the General Land Office of the State of Texas, March 24, 1893.

That said map, referred to in said certificate, was a map of Liberty county, Texas, and the sections referred to in said certificate as marked "blue" were not detached and isolated from other public lands, and the said

W. L. McGaughey well knew that said sections were not detached and isolated, as stated in said certificate as shown on said map, but the said W. L. McGaughey did then and there as aforesaid falsely pretend to, and attempt to, fraudulently induce the said William Bramlette to sign said certificate, and the said W. L. McGaughey did then and there know that said certificate was a false certificate at the time and in the manner aforesaid.

Whereby, in view of the premises, the House of Representatives of the State of Texas, do say and charge the said W. L. McGaughey, Commissioner of the General Land Office, in the manner and by the means aforesaid, and at the time aforesaid, did commit and was guilty of the high crime and misdemeanor and malfeasance in office, and did hereby render himself unworthy and no longer fit to exercise the duties incumbent upon the Commissioner of the General Land Office of the State of Texas.

Question by the Chair: Has this article of impeachment been prepared by the committee or not?

Answer by relators: It has been presented to the House and passed by the House.

Respondent's counsel states: Mr. President, that is the same paper that was offered this morning and which was voted down by the court with the simple addition to it that the paper now presented is authorized by the House of Representatives. While we do not think this character of proceeding is regular or lawful, or can be sustained under any rule of practice, still the defendant will not make any opposition to the filing of this additional article, it being simply understood by the court that our demurrers, both general and special, as applied to article 25, to which this is a substitute, shall be applied to the new article. And secondly, if the demurrer shall take the course that it did to the original article, then our answer or general denial to the truth of the matters alleged in the article shall be considered as applicable to it. And third, that our special answer to article 25 shall be taken by the court as an answer to this substitute article. With that understanding on the part of the court, we will make no objection. While we believe that it is irregular and unauthorized and really in compliance with no rule of practice known to Courts of Impeachment or any other courts, still as the House desires it to

be considered, we are here to answer it if the court will entertain it.

Statement by the Chair: Of course the article can be filed if there is no objection.

Statement by relators: So far as we are concerned we have no agreements to make with counsel. We are not here to get this paper filed. We think we have a right to file the article under rules of Courts of Impeachment.

Statement by respondent's counsel: While we made no objections, we submitted to the judgment of the court on the demurrers and answers.

Senator Simpson moved that the article be stricken out.

Said article is again read to the court.

Statement by respondent's counsel: In reply to the suggestion made that it might take further time for us to answer this article, I would suggest that the respondent will want no further time, and so far as he is concerned, he is perfectly willing for the article to be considered.

Statement by relators: We rely upon our right to present this article. I will state further that if, during the pendency of this trial, if the House deems it proper, and they find other matters upon which to base charges against the Land Commissioner, they will be tendered to the court upon the right that we have reserved to present further articles of impeachment.

The motion of the Senator Simpson to strike out the additional article was lost by the following vote:

YEAS—6.

Agnew,	Shelburne,
Crowley,	Simpson,
Lawhon,	Woods.

NAYS—15.

Atlee,	Hutchison,
Baldwin,	Imboden,
Boren,	Jester,
Bowser,	McKinney,
Cranford,	Smith,
Dickson,	Steele,
Douglass,	Tips.
Greer,	

ABSENT—10.

Browning,	McComb,
Dean,	Presler,
Goss,	Swayne,
Kearby,	Whitaker,
Lewis,	Yoakum.

L. S. Ross, witness for the prosecution, being recalled, testified as follows:

Q. You were asked as to whether or not applications had been made for

purchase of school lands for this mass of land in Chambers and Jefferson counties.

A. Yes.

Q. Were applications made for Jefferson county?

A. Yes.

Q. How many?

A. I don't know.

Q. How many for Chambers county?

A. About 35.

Q. They were all filed on the 26th of January, and all rejected, were they?

A. Yes.

Q. For what reason?

A. That they were not on the market only to actual settlers.

Q. Were there the same number in the other county?

A. No. Not that many. They were filed from time to time, not all on the same day.

Q. These applications here are the ones that were granted in Liberty county are they?

A. Yes.

Q. On the application of Haldeman, I notice that it was received on the 9th of January in this year.

A. Yes.

Q. Was that before the lands had been put on the market for sale as detached lands?

A. Yes. Before that block was changed.

Q. That application was received and granted to Haldeman for land before the land had been put on sale, was it?

A. Well, some of those sections in the Haldeman application were sold under a ruling that I had been selling under in other counties, and I consulted with John McGaughey on those sections that he applied for, and he thought they should be awarded.

Q. Some of these sections were attached lands, were they not?

A. Yes; some of them were.

Q. What was the date you sent the Liberty county notice out to the clerk?

A. I believe it was on January 20.

Q. I notice the application of Covert and a number of others filed on January 23, 1893.

A. Yes.

Q. That was the date on which you received notice by telegram from the clerk of Liberty county that he had received your notice, was it?

A. I don't know if it was by telegram, but that was the day we got the notice.

Q. Who did you get the notice from?

A. I don't know if it was by telegram or not.

Q. Was it not a telegram from Friedenhaus?

A. It was not.

Q. Nearly all of those applications were filed on January 23d, were they not? And were but the refiling of applications that had been filed before that time?

A. Yes.

Q. I notice the sale to A. Schwartz on January 11. Was that before the notice to the Liberty county clerk?

A. Yes.

Q. Is that the same Mr. Swartz that is the father-in-law of Mr. Harris?

A. Yes.

Q. Did Mr. Harris present that application to you?

A. I don't know. I found the application on the desk, and I don't know how it got there.

Q. Swartz made two purchases, did he not?

A. Yes.

Q. I notice Friedenhaus filed applications on 23, who filed them for him?

A. Some were filed by Mr. McCarty, but those last applications, I don't know who filed them for him.

Q. Did not McCarty file them for him?

Q. Did not McCarty bring you a telegram that notice had been received in Liberty county?

A. No. McCarty filed Friedenhaus' and Covert's applications.

Q. Did not McCarty file application for Collett?

A. No; he filed his own. Halde-
man made several purchases.

Q. The application of David Boaz was filed January 20, 1893. How did it come that it was awarded?

A. That was awarded after the notice had been received from the clerk, and I was instructed also to award that by John McGaughey, and he stated if there was no adverse applications, it might be awarded.

Q. I understood you to say this morning, that your rule was invariable to reject all applications unless notice had been received from the county clerk?

A. That was my rule unless I received instructions from the chief clerk of my department, or from the Commissioner to change it. That was made with respect to Haldeman and Boaz's purchases of the Liberty county lands.

Q. How about the application of W. F. Simmons?

A. I don't think his application was filed for some time after.

Q. Who filed that application?

A. I don't remember.

Q. Did Boaz?

A. I don't remember.

Q. Did you make exceptions in favor of any one else in Liberty county?

A. No; I don't remember of any others.

Q. The Covert and Friedenhaus and Collett lands were awarded on the 23d day of January, the day on which the notice was filed by the clerk in Liberty county?

A. Yes.

Q. From your knowledge of the mails from Liberty county, don't you know you acted on a telegram from there?

A. I don't know whether I saw a telegram from the clerk or not. It was generally known in the office, and it was my understanding when I awarded those applications, that the clerk had been heard from. I understood that to be official.

Q. Coming to the Harris county lands, you acted on a telegram from the clerk with respect to them, and the applications from Taylor and other parties were filed on the day you got the telegram—on the 16th day of December?

A. Yes.

Q. Who filed DeCordova's application?

A. I do not know.

Q. They seem to have been filed on the 16th day of December. Do you know who filed them?

A. No.

Q. Was it McCarty?

A. I don't know.

Q. The Dillon application was filed in September, was it not?

A. Yes.

Q. The applications of Stafford and of Cuney were also filed before the notice had been sent out, were they not?

A. Yes.

Q. The application of D. Boaz seems also to have been filed on December 14?

A. Yes; that was the date on which the county was changed.

Q. Was that before the clerk had received notice?

A. Yes.

Q. How came you to grant that application?

A. I called the attention of John McGaughey to that application, after we had heard from the clerk, and he asked me if there were any other applications for the same sections, and I said there was not; and he said, as the land was on the market he instructed me to award the land to Mr. Boaz;

and he stated that Mr. Boaz had left town and he did not know where to correspond with him.

Q. You made those awards on the 18th, did you not?

A. No; I don't think the applications were all awarded on that day. In fact, I don't remember the exact date that I passed on those applications.

Q. I see two applications from Boaz?

A. Yes; they were both under the same instructions.

Q. He got how many sections?

A. Two sections. We only have two files in the name of Boaz.

Q. In your department, do you make the sales of timber lands?

A. Yes.

Q. Did you make the sales of timber lands in Jasper county?

A. Yes.

Q. Did you make them at the price the land was put when classified?

A. I did not know anything about the classification. I made them at the price they were on the market at the time the application was filed.

Q. You say you made those sales at the prices then current in the office?

A. I did not examine the classification myself, but my assistant always examines the classification. The application for purchase is given to him and he examines as to whether or not it is on the market and at what price, and after it comes to me I make the final examination and pass upon it.

Q. Did you not make those sales at a smaller price than the application?

A. I have heard it stated in the office that the classification of some of the lands have been changed.

Q. Examine this memorandum and state what it is.

A. I presume I made those sales, but I would not know unless I had the applications.

Relator here offers in evidence a statement which is a comparative list at which the prices on the timber lands in Jasper county were fixed and the prices at which they were sold by the Commissioner.

Question by respondent's counsel: Does that statement embrace any land embraced in the articles of impeachment?

Relator's counsel states the contents of the statement, and relator's counsel also offers section 86 in the statement as land sold about the same time.

Q. I notice that these sales were generally made on the same day the reductions were made.

A. Yes.

Q. Who acted as agent in making these purchases?

A. I don't know.

Q. Do you know a man by the name of D. Call?

A. I have seen him in the office several times.

Q. Was he not acting as agent for the lumber companies in the purchase of these timber lands?

A. He bought some in his own name.

Q. Did he also act as agent for the purchasers?

A. I don't know without looking.

Q. Was it usual to make the sales the same date that they were re-priced?

A. I remember of no other sales of that kind having come up. Where the lands were put on the market and simply the price changed I never had any instructions as to whether the parties should be required to file their applications after the clerk was notified. My object in notifying the clerk was that we would not sell lands at one price and the clerk have them on his books at another. Well, the clerk's records would have to conform to our records.

Q. Was it for the purpose of keeping his records straight?

A. I suppose so.

Q. Is not this the fact about it: that the applications for purchase were made first and then the reductions were made?

A. I could not state that because I do not know the date that the applications were made.

Q. Is it not true that D. Call was making applications for those lands with timber on them?

A. He was working with Mr. Phelps.

Q. Who was Mr. Phelps?

A. He was the classifying man.

Q. Was he not trying to induce Phelps to reduce the price of land?

A. I suppose he was there correcting the average price of land.

Q. Do you know whether or not he made any present to Phelps?

A. Of my own knowledge I do not.

Q. Do you know from what Phelps told you?

A. No.

Q. Is it just from hearsay then?

A. Yes.

Q. You stated on yesterday that Commissioner Hall had placed on sale 50 or 60 counties similarly situated to those in Liberty and Harris counties?

A. Yes.

Q. Can you give me those counties?

A. From the record, yes.

Q. Do you know these things from your knowledge or from the record?

A. It is from the record. I had nothing to do with the making of the sales.

Q. Did Mr. Hall give you the instructions verbally?

A. No. I was assistant at the time and Mr. Wallace was sales clerk, and I was given to understand that certain counties were under section 22.

Q. Did you not have two lists?

A. No. We had a list that was used for our guidance. It was a paste board list of the counties, and opposite the county it was marked whether it was section 22. or general instructions. It was indicated by section 22, and by G. I. When section 22 was marked opposite the county we understood the county to be for sale to anybody and to others than actual settlers. Randolph Lawrence was chief of that department then. Then there was a book containing when the list was sent out, the date the clerk acknowledged receipt and a note made of the date they were sent out, and also what the instructions were as to sales, whether they were put under section 22, or under general instructions. That book can be gotten by applying to the Land Office.

Q. You are not able to give us the counties now?

A. No. Only from the records.

Q. How many of those counties were there?

A. I have never counted them, but my recollection is there was about fifty or more.

Q. You say these counties under Commissioner Hall, that the lands, similarly situated to these lands in Liberty and Harris counties cornering each other in same manner, were put on the market under section 22?

A. I don't know if that would be in all the counties, but in some of the counties they were.

Q. Name some of the counties.

A. Medina and McMullen.

Q. How about Shakelford county?

A. I don't remember how the lands were located in that county. That was marked under section 22. Waller county was put on the market under section 22 by Commissioner Hall. The lands in those counties were put on the market under section 22. and since I have been there applications have been received for said lands. I mean by linked together, that they were similarly situated to those in Liberty and Harris counties.

Q. Is this map here a correct map of McMullen county?

A. Yes. The lands were put on the market by Commissioner Hall in McMullen county, and the lands were situated as they are in Harris and Liberty counties, and were put on the market under section 22. My understanding is that the county is on the market under section 22, and was so put by Mr. Hall. I will state that so far as I know I don't remember the date, but I know applications would be received, and I am able to show from the records that some were received for those lands under section 22. That is what I understand.

Q. Has it not continued to be the ruling of the Commissioner that the Commissioner had the authority to put lands similarly situated on the market under section 22?

A. I suppose that the records would show that it was his ruling. I never heard the Commissioner make any ruling on that county. They were put there and offered for sale that way.

Q. As one of the officers of that department was it not always understood, both under Commissioner Hall and Commissioner McGaughey, that unless the Commissioner had made a special order in regard to it that the lands in those counties were on the market to actual settlers except those sections separated?

A. They were on the market to any one.

Q. When the Commissioner gave an order in regard to it they put on any counties they desired under section 22, did they?

A. I never heard Mr. Hall make any rulings of that kind, but I know those counties were on the market under section 22. I know there were about forty or fifty counties put on the market that way by Commissioner Hall.

Q. I will ask you, Mr. Ross, where are the original classifications of those timber lands in Jasper and Newton counties?

A. They are on record in the Land Office.

Q. Do you know whose handwriting is on this paper?

A. That is Mr. Gathright's. I think I recognize it.

Q. Is that the way it appears on the original?

A. No; I never saw anything like that before.

Q. Turn over these pages and see if you ever saw anything like it in the Land Office before?

A. No; I never saw anything just like it in the Land Office before.

(Paper here inquired about is the list containing the comparative prices of the timber lands above set out.)

Respondent asks for an order to the Land Office for the original of which this list is supposed to be a copy.

Statement by relators: Mr. Gathright made this list by order of the Board of Managers from the records.

Respondent's counsel: We want the original classifications, and amended classifications in Jasper and Newton counties of sections 50, 52, 66, 68 and 118, those named in the articles of impeachment.

Statement by the Chair: The Chair would suggest that to take the records from the custody of the Commissioner and bring them here into court would be embarrassing to the Land Office.

Respondent objects to this paper and asks that it be excluded. First, because it is not authenticated under the seal of the Land Office, and second, because it is not purported to be a copy of any original, but merely a compilation by Mr. Gathright, nor does it contain the substance of any document and only has conclusions.

By the Chair: The Commissioner certifies that it is a correct compilation, and is admissible.

Statement by respondent's counsel: I would suggest or call your attention to the fact that we have a statute on the point which says that any instrument on file in the Land Office can be certified to by the Commissioner of the Land Office under his hand and seal, and this has no seal of the General Land Office.

By Chair: Of course it must have a seal.

Relators withdraw the paper for the present.

RE-DIRECT EXAMINATION.

Q. Do you find the official classification there, Mr. Ross?

A. I believe this is the classification made by Mr. Scarboro.

Q. The classification made by the Commissioner is not here, is it?

A. It is in the Land Office.

Relators object as follows: Here is a classification made by Mr. Scarboro that was not adopted by the Land Office that they are asking about.

Q. Read the classification of section 50 in Jasper county?

A. Watered timber 640 acres, price of timber and land \$5. Price of timber only \$3, was changed to \$2.

Q. What does it say about whom sold to?

A. Sold to the Cow Creek Transportation Company, March 3, 1893. That is the date of sale. County clerk notified March 14, 1893.

Q. How about section 52?

A. Watered, timber, timber and land originally at \$7, timber only at \$6; timber and land changed to \$5.50 and timber only to \$2.50. Sold to the same company March 14, 1893; county clerk advised of the change the same day.

Q. Did not that result in raising of the price of the land outside of the timber from \$1 to \$3.

A. Yes, sir.

Q. It reduced the price of the timber and raised the price of the land, did it not?

A. Yes.

Q. How about section 66, Houston and Texas Central?

A. It is watered timber, first classified at \$5 for timber and land; timber only, at \$4. The land and timber was changed to \$5.25, and timber only, to \$2.25. The land had originally been \$1 an acre, and the reduction in price of timber raised it to \$3 per acre.

Q. How about section 68?

A. Section 68, land and timber, at \$5; timber only at \$4. Timber was changed to \$2.

Q. State whether or not the reduction of timber to \$2 per acre had the effect of raising the price of the land from \$1 to \$3 per acre?

A. Yes.

Q. How about section 76?

A. Original price of land and timber, \$7; timber only, \$6; land and timber reduced to \$5.50, and timber only to \$4.50.

Q. Did not that result in raising the price of the land?

A. Yes. Sections 66 and 68 were sold to the same company on March 14, 1893.

Q. How about section 86?

A. Originally classified land and timber at \$6.50; timber only, \$5.50; land and timber reduced to \$5, and timber to \$3. County clerk was advised November 30, 1892. Land not yet sold.

Q. How about section 92?

A. Originally classified land and timber, \$5; timber only at \$3.75. The timber only was reduced to \$3, and county clerk notified November 30, 1892. Not yet sold.

Q. How about section 118?

A. Land and timber originally classified at \$10; timber only at \$9. Price reduced for land and timber to \$6, and timber only to \$4. County clerk ad-

vised January 23, 1893. Sold to Texas Tram and Lumber company, January 6, 1893.

Q. Did that have the effect of reducing the price of the lumber and increasing the price of the land?

A. Yes.

Q. How about section 22?

A. That was originally classified at \$8.50, land and timber. Timber only, at \$7.50. Land and timber reduced to \$5.25. County clerk advised to correct May 6, 1892. Sold to Texas Tram and Lumber Company January 6, 1893.

Q. How about section 52, Texas and New Orleans?

A. That was originally land and timber at \$5. Timber at \$3. Timber reduced to \$2.

Q. It seems that in the official classification the lands with the timber on them had been put at a low price. State whether or not in the reclassification the price of the land was considerably raised.

A. Yes, in some instances.

Q. State whether or not that would have a tendency to keep the land off the market to purchasers desiring to buy as actual settlers.

A. I could not state that.

Q. It raised the price of the land, did it not?

A. Yes.

Q. Changes that were made in these classifications were made for sales to those parties, were they not?

A. I don't know. I could not state of my own knowledge.

Q. They bought them about the time the price was reduced, did they not?

A. Yes.

Q. We have here the certificate of R. M. Hall to the classification and prices of these lands as originally classified before these changes were made, see if this is it.

A. This has on it "This was examined and approved as the official classification and appraisement of part of the unsold school lands in Jasper county, the 16th of January, 1888. R. M. Hall, Commissioner."

Q. That is as to the first prices called off the book by you, is it?

A. I don't know that I remembered it. I presume it is.

RE-CROSS EXAMINATION.

Q. State what is this book?

A. This says: "I hereby certify that the above and foregoing is a correct classification and valuation of said section according to my best judgment after careful inspection made by me

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on the ground, this October 28, 1889. L. D. Scarboro."

Q. Who was he?

A. State classifier.

Q. Turn to section 52, H. & T. C., in Jasper county, and state was the original price at which that was placed in the book.

A. Land and timber, \$5; timber only, \$3.

Q. What was the change made in that?

A. Timber was reduced to \$2.

Q. Was it reported as watered and timbered land?

A. It don't state whether watered and timbered or not. This section was not sold at all.

Q. Take the next section, No. 66.

A. The original classification of this section was land and timber \$5, and timber \$4.

Q. I will ask you if any land under this act was sold at \$1 an acre?

A. No.

Q. I will ask you, Mr. Ross, who that land was sold to with the timber on it—that is, section 66.

A. Cow Creek Transportation company.

Q. Who are they?

A. I don't know.

Q. Do you know if Colonel McGaughey knows them?

A. No.

Q. Were they sold regularly upon application filed in your office?

A. Yes.

Q. These applications complied with the terms fixed in your office, did they?

A. Yes.

Q. When were these prices changed?

A. The date here seems to be the 14th of March.

Q. How did they come to be changed, and why were they changed?

A. That I don't know.

Q. Who makes the reports on which these changes are made?

A. I don't know who made the report on those particular sections. I suppose they required the county surveyor to make them. I don't know who made the classification in Jasper county.

Q. Do you know what section 66 was priced at by the original classification?

A. In this book I find: "This survey I find about 150 acres that the timber has recently died on. Balance fair pine. Survey will average about 4000 per acre for building, or 5500 per acre for mill timber, worth about \$2.50 per acre.

Q. That is the land and timber is it?

A. No; the timber.

Q. What was the sale of the timber and land?

A. The timber was sold at \$2.25. It had remained on the market from October 28, 1889 up to March 14, 1893, without a purchaser.

Q. Any applications on file for it?

A. No, not that I know of.

Q. Upon re-classification it was sold the timber, at \$2.25 was it?

A. Yes.

Q. Turn to section 68. What is that?

A. That section has timber and land \$5.00. Timber only, \$4.00. Timber was reduced to \$2.00.

Q. Will you be kind enough to tell what the original classifier says about that?

A. About 150 acres of good pine on the south side of creek and about 350 acres of medium pine on the north side of creek, balance in creek swamp. Will average about 4000 per acre of building or about 5500 for mill timber. On survey worth about \$3.00 per acre. That had remained on the market from 1889 to 1893 without an application.

Q. It was re classified and sold at how much?

A. \$2.00 per acre for the timber.

Q. Did that leave the land still unsold?

A. Yes.

Q. Take section 76, please.

A. That was classed, land and timber \$7 and timber at \$6.

Q. Take sections 76, 92, 118 and 122, and I will ask you if all of these lands were not held on the market from 1889 up to 1893 without an application for a purchaser?

A. Yes sir; I don't think there were any applications filed for timber on these lands, at all, prior to these applications here.

Q. They were reclassified by the Commissioner and placed on the market?

A. Yes.

Q. You have not the report of the county surveyor upon which they were reclassified, have you?

A. No; it is in the Land Office. If there is anything they were reclassified on, it is in the Land Office.

Q. Do you know Mr. Kellie?

A. Yes.

Q. Is he the county surveyor?

A. Yes, of Jasper county.

Q. You say you do not know those parties who made those purchases?

A. No.

Q. Was the Commissioner connected with them in any way, as you know?

A. No.

Q. I will ask you, Mr. Ross, if these pencil memorandums here correspond with your books; for instance in taking section 86, land and timber \$6.50, and timber \$5.50.

A. Yes.

Q. That was made in the office, was it not?

A. Yes, this is the classification; I suppose it was made in the office.

Q. Was not that simply a raise in value above this report here of the State classifier?

A. Yes, he reports timber worth \$4, and this states timber worth \$5.50. It is raised. The pencil memorandum is the raise.

Q. What was it reduced to?

A. To \$3.

Q. I will ask you if there was any collusion with anybody in regard to these lands with a view of trying to sell them for less than they were worth, or was it the object to sell them for all they would bring?

A. I know of no collusion.

Q. They were placed on the market just as these lands usually are, were they not?

A. Yes, sir.

Q. I will ask you if it is not the custom in the office, and an old custom, to act upon the statements of county surveyors of counties in which lands are situated, in regard to their situation, character and value?

A. I don't think I could state any instance where that was done. I could not state that I know it to be so unless I could state an instance.

Q. Don't they usually take the statement of the county surveyor?

A. Yes; it would be taken as good evidence of the value of the land and timber.

Q. Mr. Kellie was county surveyor of Jasper county, was he not?

A. Yes.

Q. Is he not an old State classifier?

A. Yes; he classified some lands under Mr. Hall.

RE-DIRECT EXAMINATION.

Q. I understand you to say that it is the rule of the office of the present Commissioner to take the statement of the county surveyor as to the value and price of land.

A. I did not say I knew that to be the practice of the office.

Q. You say you would consider that pretty good evidence. Suppose you had a tract of land and a man wanted to buy it, and he wrote to a party to go there and inspect it, would you rely upon the classification of the party or not?

Respondent objects to this question. Objection is by the Chair sustained.
Q. You say these lands had been on the market since 1889 at their former prices and had not been sold?

A. Yes.

Q. Had you sold some timber in that section?

A. Yes, some.

Q. You were not expecting to sell all of it, were you?

A. No; we were selling it as the applications came in.

Q. After it had been on the market you did not have to put it down in price, did you?

A. Well, it was sold the same day.

RE-CROSS-EXAMINATION.

Q. There is a good deal of land on the market yet not sold at the reduced prices, is there not?

A. Yes.

Relators offer in evidence the following two letters, they being certified copies of their originals.

JASPER, TEXAS, Nov. 26, 1892.

Hon. W. L. McGaughy, Commissioner General Land Office, Austin, Texas:

DEAR SIR: Beaumont Lumber Co. desiring to purchase the timber of the following sections: Houston and Texas Central Railway, No. 86, certificate 25-1209, and No. 92, certificate 25-1202, near the east line of this county. No. 86 is priced for timber \$5 50 per acre, and No. 92 at \$3.75 per acre. I have just returned from a careful survey of them, and find on section 86 about, or nearly, half the timber dead. What we call a rosin deadening. Occasionally this takes place, and kills out a large scope of pine. No one knows the true causes. I find that this section has not now got more than half the timber on it when classified, and would recommend that it be reduced to \$3.00 per acre for timber. No. 92: the timber is short and knotty, and a great deal of waste on it. I find its timber is priced at \$3 75. Would say that \$3.00 is a big price for it. Would recommend that it be reduced to \$3.00. I am afraid you think I am doing a good deal of reclassifying, but the parties pay me \$5.00 per day for my work, and it is work that ought to be done, so I concluded it would be saving the State that much.

Hoping that you may agree with me, I am Very truly yours,

E. J. KELLIE.

JASPER, TEXAS, Nov. 6, 1892.

Hon. W. L. McGaughy, Commissioner General Land Office, Austin, Texas:

DEAR SIR: Recently I was in the south end of this county at work, and

the Beaumont Lumber Company got me to go and look at section 52, certificate 228, Texas and New Orleans Railroad Company. They said it was classified at \$3.00 for timber only, and desired me to represent to you what I thought of it. After a thorough investigation of the land, I find it not half timbered, but full of bay galls and marshes, and what timber is on it, is short and sappy. Two dollars per acre is a big price for it, and they would not give that if it were not that their tramroad will pass through it. Would advise that you put it at that price for timber only. It will be just saving that much for the school fund, for if they pass it by, it will never be sold. Yours truly,

E. J. KELLIE.

Randolph Lawrence, witness for the prosecution, having been duly sworn, testified as follows:

Q. Your name is Randolph Lawrence?

A. Yes.

Q. What business are you engaged in?

A. Chief clerk in the State treasury department.

Q. How long have you been engaged in that work?

A. I went in with Mr. Wortham.

Q. What had you been engaged in before that?

A. Clerk in the General Land Office.

Q. In what department?

A. In the school land department.

Q. Who was Commissioner during your service there?

A. Mr. R. M. Hall.

Q. Do you know the practice of the office with respect to sales of public free school lands in the State?

A. Yes.

Q. What was the practice?

A. The method of the office is about this, after refreshing my memory: The old organized counties, organized prior to 1875, after having been classified and list returned, were gone over; and there was one list that comprised a great many counties, which, according to the report of the classifier, had in them lands which were wholly unfit for agricultural purposes as a whole. The good lands had all been sold, and they were left scattering about counties with many sections and parts of sections. The classifier's reports showed these lands unfit for agricultural purposes, and unfit, half of them, for grazing purposes, and had no water on them. These lands were placed on the market as a whole, without regard as to whether they were detached or not. There was

another report that had lands on them that had soil, and these were placed on the market and sold in about this manner: The map was consulted, and all those sections detached were placed on the market, under section 22, not requiring settlement; the others were placed on the market requiring settlement. After lists were filed with the county clerks, and notice received, the sales went on under those conditions.

Q. What with respect to Harris and Liberty counties?

A. They were placed on the market under general instructions. After consulting the map, detached sections were placed on the market under section 22, not requiring settlement. The body of attached lands were placed on the market under general instructions. Those counties which had lands fit for farming were placed on the market under general instructions, that is they had to settle on them to buy.

Q. You don't know when the counties of Medina and McMullen were organized do you?

A. I don't know.

CROSS-EXAMINATION.

Q. Do you recollect how the lands in Medina county were put upon the market?

A. Yes; it is my recollection that part of them were put under general instructions and part under the detached class.

Q. It was the custom of the office, was it, where lands were reported as unfit for agriculture, and were classed as such, that they were put on the market to be sold to anybody, whether they connected or not?

A. Yes.

Q. I will ask you if the Medina county lands were not about in that shape (showing witness the map), lands whether connected or not, if reported as lands not fit for farming, and strictly grazing lands, and had no water on them, were put on the market and sold to any purchaser who would buy?

A. Yes, that was the rule. Counties were listed. We took the counties, according to their report, that had any land not fit for settlement, and we then made a list of all those counties and put them on the market under section 22.

Q. You collected a list of those counties and put them on the market under section 22 without regard to whether they connected or not?

A. Yes.

Q. Do you recollect the number of counties in that condition?

A. No; but there were a great many.

Q. Something like eighty?

A. Well, I don't know; a good many though.

RE-DIRECT EXAMINATION.

Q. In many counties were they in bodies or were they scattered?

A. In many counties they were scattered.

Court adjourned until to-morrow morning at 9 a. m.

SENATE CHAMBER,
AUSTIN, TEXAS, May 4, 1893.

The High Court of Impeachment convened pursuant to adjournment. Lieutenant-Governor Crane presiding.

Quorum present.

Wm. Bramlette, witness for the prosecution, after having been duly sworn, testified as follows:

Q. Judge Bramlette, you are chief clerk in the Land Office, are you not?

A. Yes, sir.

Q. How long have you occupied that position?

A. Since Colonel McGaughey first took charge of the office in January, 1891, I think.

Q. During that period of time what has been the rule and practice with respect to the sales of school land in the older counties of the State?

A. Well, sir, I am not as familiar with the doings and regulations of the school land department as I am of the other departments of the office. It is true, being chief clerk, it looks like I ought to know, but a few months after McGaughey took charge of the office, he said to me on one occasion that he would take charge of the school land department; I could overlook the balance of the office, and that would have his especial attention. Since that time I have taken but little cognizance of the transactions of that office, except what I would learn through correspondence.

Q. If you have any knowledge on that question, state the extent of your knowledge as to what was the rule of practice in regard to the sales of land to others than actual settlers.

A. My information, and knowledge so far as it goes, is that up to recently the sales were made to actual settlers only, unless the sections were detached and isolated from other public lands.

Q. With respect to the block in Harris and Liberty counties what has been the rule?

A. The rule formerly was to sell only to actual settlers any blocks of land.

Q. If that rule has been infringed at any time when was it done?

A. Well, sir, I could not give dates. The first information of that rule being infringed was after it was done. It was in the case of the Harris and Liberty county lands that were sold as isolated and detached. I knew nothing of it until after it had been done. I would remark that Mr. McGaughey said in my presence on one occasion after those sales were made that the Liberty county lands were sold before he knew it.

Q. What else did he say?

A. He remarked also that as they had been sold he would stand by the sale. But that they had been sold without his knowledge.

Q. Did he make any remark further concerning the legality of the sales?

A. It occurs to me that he did; it occurs to me that he did make the remark that those Liberty county sales were not legal. That is my recollection about it. I am sure that on one occasion, after a conversation between Roach, Baylor and himself, on Monday morning after that he came to my desk and said that those sales were illegal and he would cancel them. I made another remark to him at the time that I would go further than that and discharge all those clerks in the school land department.

Q. State whether or not after this investigation concerning the transactions of the school land department, and especially with regard to the Liberty and Harris county lands, anything occurred or any effort was made to obtain your certificate to a map of Liberty county?

A. Yes, there was a request to that effect.

Q. Just state all the circumstances from beginning to end of it.

Respondent asks the Chair to instruct witness to state only his conversation with defendant, or conversation in the presence of defendant.

Relators: There is an exception to that rule, if part of the conversation occurred in the presence of the defendant and the same conversation was continued by parties acting with him, and he was absent, it would be admissible.

By the Chair: First get out the things done and said in the presence of the Commissioner.

A. I don't know how to begin, unless I begin on the certificate.

Q. Begin by any connection that the

Commissioner had with it directly or indirectly.

A. Some half an hour or three quarters of an hour, perhaps, before I was requested to sign a certain certificate I went into the Commissioner's room on some business. He remarked to me that I must sign up the correspondence that evening. I think it was about 3 o'clock in the afternoon. I said, Colonel, let me have your rubber stamp to sign them with (I had none at that time). He generally brought in the stamp, as it is a heavy job to sign up two or three hundred letters and many other documents. He declined to let me have the stamp, and said I must sign them with a pen. He had always brought his stamp in to me to sign them with before that. He then turned to John McGaughey, who was present, and remarked to him to go and get those matters fixed up for Townsend. That is about all, so far as the Commissioner is concerned, that I know at this particular time. There were subsequent occurrences. After this certificate was presented to me, and during the conversation with John McGaughey—

Q. State was done after that.

A. On the 24th of March, 1893, John McGaughey came to the chief clerk and presented a map of Liberty county (I read from a memorandum made by myself next day) with the sections that had recently been sold as detached lands marked blue and with a certificate written in the margin, which he asked me to sign. The following is the substance of said certificate, if not the exact words: "I, Wm. Bramlette, chief clerk of the General Land Office, hereby certify that the sections marked blue on this map were, when sold, detached and isolated from other public lands. Given under my hand and seal of the General Land Office this 24th day of March, 1893.

Chief Clerk."

Q. Proceed to state now that certificate was presented to you by him, and how long after the conversation with the Commissioner.

A. It was some half or three-quarters of an hour afterwards. In that conversation I asked John McGaughey what his object was in getting me to sign that certificate. His answer was: "Representative Townsend said if I would sign that certificate it would clear my Pa." It made a very lasting impression on my mind. That was what he said exactly.

Q. State whether or not you signed that certificate?

A. I did not.

Q. Why?

A. I told John McGaughey that I did not regard it as true, and I did not sign it. In the conversation I will say further, I remarked to him, "I will call Mr. Baylor and get his opinion." I called him and he examined it thoroughly, and I asked him if I could sign that certificate. After examining the thing, he said I could not, but said that he thought if there was another word put in there, if the word "unappropriated" was inserted, that I probably could sign it; that it might be literally true then. McGaughey (John) asked me if I would sign it if that word was put in there, and I told him I would not.

Q. Do you know what became of that map?

A. John McGaughey picked it up and carried it off, and I don't know what became of it afterwards.

Q. You have not seen it since?

A. No.

Q. You say that was a map of Liberty county?

A. Yes.

Q. Why was it you could not sign that map; wherein was it not true?

A. Because it certified that these lands were isolated and detached from other public lands.

Q. Were they scattered, or were they lands in a block?

A. A great many were in a block.

Q. Do you recollect if they were in the block next to Chambers and Liberty counties?

A. I think so, sir.

CROSS-EXAMINATION.

Q. Mr. Bramlette, if you had signed that certificate—look at this map, is it a duplicate of the map on which the certificate you were asked to sign was endorsed on the margin?

A. The map that was presented to me had the sold sections delineated in blue, just as this map has.

Q. Was it not exactly like this map?

A. I don't know.

Q. Do you see any difference?

A. I could not designate any difference now. It is somewhat similar. I presume John McGaughey can present you the map he presented me.

Q. These blue sections are known in the Land Office as school sections, are they not?

A. Yes, I think so.

Q. Before they were sold?

A. Yes.

Q. Then if you had signed a certificate of the purport you have mentioned it would have borne falsehood on its face, would it not?

A. Yes.

Q. Falsehood that anybody could detect, was it not?

A. I don't know about that.

Q. Any man that could have seen would have known that certificate was a falsehood, would he not?

A. I don't know. Many men would not have recognized it.

Q. Why?

A. Because they were not familiar with these things and law etc.

Q. Why did you refuse to sign it with the word "unappropriated" added?

A. The reason I did not sign it with that word put in, was because it looked to me that it was intended to deceive some one.

Q. Did you read that certificate?

A. I did, very carefully, two or three times.

Q. Why did you read it two or three times?

A. Well, in order to fully understand it, sir.

Q. Why did you make a memorandum, such as you have read from, the next day?

A. Well, I don't know exactly my motives in making it. I supposed as this investigation was going on, it might be called up, and I wanted to have a memorandum while it was fresh in my mind.

Q. Why did you not make it that evening?

A. I don't know.

Q. Was it not fresher in your mind then?

A. Yes.

Q. Is it not true that after that took place in the office you came over and interviewed the investigating committee, and at their request you made the memorandum next day?

A. No. The investigating committee were informed of this fact by some one else and they called me over.

Q. Who else were there except Baylor and yourself and John McGaughey?

A. I don't know that any one else was there. Several clerks were there at their desks, but I don't know if they took notice of the conversation.

Q. At whose instance did you make the memorandum?

A. I made it at my own instance.

Q. Who suggested it to you?

A. No one suggested it to me.

Q. Whose handwriting was the certificate in?

A. I don't know; I did not know the handwriting.

Q. Do you know L. S. Ross's handwriting?

A. I don't know that I would know it. There are quite a number of clerks' handwriting that I would not know.

Q. Would you know John McGaughey's handwriting?

A. I don't think I would.

Q. As a fact, is any of the solid lands as delineated on that map contiguous to unappropriated public land?

A. Well, sir, I could not tell you that without a pretty thorough examination. By examining some of the records I could tell you. Now it is owing to what you mean by unappropriated.

Q. You know what that means, don't you?

A. I think so; but I don't know what you mean. Unappropriated public domain is land that has not been set apart for any special purpose to individuals or to the public.

Q. Is there any of that land contiguous to those sections?

A. I think not; I don't see any.

Q. What are your duties in the General Land Office when the Commissioner is present?

A. They are somewhat varied. Under the direction of the Commissioner, it is my duty to take a sort of general superintendency of the office, and particularly in the morning it is my duty to read the mail, that is the mail received, and distribute it to the various clerks for investigation and action, and occasionally when I see a letter that I think deserves or requires special attention from me, I will investigate it and make the investigation myself.

Q. Is it not true that while the Commissioner is there, that your chief duty, as a rule, is, unless you are especially detailed on something else, to attend to the mails, to open letters and make memorandum of replies and distribute the letters?

A. That is part of my duty.

Q. Is not that your main duty?

A. No.

Q. What is the balance of your main duty?

A. As I remarked, under the direction of the Commissioner, that was part of my work. I will say yes, that was my chief duty.

Q. You said when the Commissioner went into the office he said he would take charge of the school land department and you could have supervision over the balance of the office?

A. Yes.

Q. That is to say you were to govern the balance of the office.

A. No; I did not understand that I was to take a general supervision, and if I found anything going wrong to notify him.

Q. That was your duty all the time, was it not, without any agreement with the Commissioner, that if you found anything going wrong you would notify him?

A. Yes.

Q. Did you ever talk to Commissioner McGaughey about this certificate, that you have been explaining, before it was presented to you?

A. No.

Q. Did you ever talk to him about it after it was presented to you?

A. No, I did not.

Q. Then you never talked to Commissioner McGaughey about it, the certificate, at all?

A. No.

Q. Neither before nor after it was presented to you?

A. No.

Q. The whole connection of Commissioner McGaughey with the certificate was your inferences with reference to John McGaughey attempting to induce you to make that false certificate, and that the Commissioner told John McGaughey to fix up the matter that Townsend wanted?

A. That was not the whole of it. I gave the remark of McGaughey, and I will specify another thing that impressed itself on my mind.

Q. I want everything that occurred between you and McGaughey. Was there anything else that occurred between you and the Commissioner other than what you have stated, that in your presence he told his son, John, to fix up the papers that Townsend wanted?

A. No, unless it has been the manner in which the Commissioner has treated me since that time. He has not treated me in the manner that he had previously, but has been very cold and frigid.

Q. That is not an answer to my question. My question is: First. That all you know about McGaughey's connection with that certificate, or inducing you to sign it, is the fact that in your presence he told his son, John, to fix up the papers that Townsend wanted; and, secondly, that since that time he has treated you coldly, even frigidly?

A. Yes.

Q. Either on that day or the next day after that you went before the investigating committee, did you not?

A. It was some days after, I was

called before that committee and I went.

Q. Before that committee you swore that Commissioner McGaughey had tried to induce you to sign a false certificate, did you not?

A. No. The fact is, I was not sworn on that occasion; they merely asked me in regard to the facts.

Q. Are you certain, Mr. Bramlette, that you made the memorandum you read over, the next day after the discussion about the map?

A. Yes.

Q. Please look at it and see the date on it. What is the date on it?

A. I don't know that there is any date on it. Yes, the 24th of March, 1893.

Q. Is that the date you made the memorandum?

A. No, sir.

Q. What did you date it the 24th of March for if that was not the date on which you made it?

A. I said that on the 24th of March John McGaughey came to the chief clerk's desk. I have not dated this memorandum at all.

Q. What was the date of the certificate?

A. I don't know. This is not the map that was represented to me.

Q. What is the date of this map?

A. March 22, 1893. Possibly that was the date of the original certificate. I made that memorandum from my recollection and I supposed the date was the day he presented it to me.

Q. If the certificate was presented to you for signature on the 22nd, are you not in error as to when this conversation took place? You state in your memorandum it was on the 24th, and if it was on the 22nd you are mistaken, are you not?

A. Yes, in regard to the date. It was not on the 22nd, or I would not have made that memorandum.

RE-DIRECT EXAMINATION.

Q. You were asked about your statement to the committee, did you make to them substantially the same statement you have made here?

A. I did.

Question by Senator McComb: To whom did you mention the matter of the false certificate before you appeared before the investigating committee?

A. I don't recollect. It was a matter that had been rather notorious about the Land Office, and I might have mentioned it to several.

Q. Did you talk about the matter to any one before the committee summoned you?

A. I think I did. I don't know to whom though. I was asked by two or three about it.

Q. Did the Commissioner ever speak to you in regard to the certificate, or did you ever speak to him of it?

A. I did not; not that I recollect of.

Relator here asks counsel for respondent if they have the map referred to with the false certificate, about which this witness has been asked.

Respondent's counsel inform Relators that they have not; that it was destroyed.

TESTIMONY OF J. W. GILLESPIE.

J. W. Gillespie, witness for prosecution, having been duly sworn, testified as follows:

Q. Are you an employe of the Land Office?

A. Yes.

Q. How long since?

A. I went in with Commissioner McGaughey. I have been in a little over two years.

Q. What department of the office are you in?

A. The school land department.

Q. What has been the practice or rule of that office with respect to the sale of school lands in blocks since you have been there?

A. They required actual settlers.

Q. Have there ever been any infractions of that rule, and if so, when were they made?

A. I could not tell without examination, but those big blocks were never sold, to my knowledge, till Harris and Liberty counties were sold.

Q. Did the Commissioner announce his policy or rule with regard to the sales of these lands when he went into the office?

A. Yes, I heard him say he would not sell any of those lands unless detached. On one occasion (there was an index hanging up and there are lands marked on it G. I. for general instructions, and section 22 where lands could be sold not requiring settlement) I asked him if he intended to sell these lands under section 22, regardless of their being attached, and he said no. He said the law was that they must absolutely be detached. I was corresponding clerk and frequently had inquiries for what lands we could sell without their being detached, and I asked him about it.

Q. Was he emphatic about telling you he would not sell them?

A. Yes; he did not make a practice of it.

Q. The first time your attention was

called to the fact that he was selling it in blocks was in the Harris and Liberty county lands, was it?

A. Yes; my business was in looking up data, and a great deal of the time I was upstairs, and if there was any sold I did not know it.

CROSS-EXAMINATION.

Q. You don't belong to the sale department?

A. No; I am assistant corresponding clerk. My business is to get up information for the typewriter. Mr. Harris is corresponding clerk. He writes the letters from my data. I make pencil memorandums on the bottom of the letters, and he writes from that.

Q. It is your business to examine lands and classify them?

A. No; I have nothing to do with that.

Q. It is not your business to interpret the law as to when a piece of land goes on the market?

A. No; I said a man might write, and I would have to find out.

Q. You would go to some one else for your information?

A. Yes. Generally we had section 22 marked opposite some sections.

Q. When a piece of land was put on the market, it was not you who did it, was it?

A. No; I had nothing to do with the selling of it; I only got data to furnish to the corresponding clerk, with which to answer his letters.

Q. When you speak about selling lands in blocks, and about Harris and Liberty counties, I will ask you if you know personally about those lands in Harris and Liberty counties?

A. No; I have never been in Liberty county; I have been in Harris county.

Q. Do you know anything about the classification of these lands?

A. My information is it is dry grazing land; dry grazing means pasture land.

Q. I will ask you if the classifications of pasture lands and agricultural lands are not entirely separate and distinct.

A. One is classed grazing and the other is classed agricultural. When a piece of land is classed as grazing it means it is fit for grazing and not fit for agriculture. Then there is a third classification of timber lands.

Members of the court ask for more information about the map spoken of by Mr. Bramlette in his testimony, and they desire to know if it is in court.

Answer by respondent's counsel: That map is in court, and we have been asking questions about it.

Judge Bramlette is recalled and asked the following question, propounded by Senator Imboden.

Q. You may state whether or not you spoke of using a rubber stamp of Commissioner McGaughey's. State if you have ever used that stamp to sign certificates, such as you were requested to sign on the map of Liberty county?

A. I think not, sir. The certificates required the seal of the office, and were always signed by hand.

Testimony of J. W. Gillespie, recalled by the prosecution:

Q. Do you know something about sales of timber lands in Jasper county?

A. Yes; they sold some.

Q. How was the timber sold?

A. That was sold for cash.

Q. How were these lands priced?

Q. Well, I am not familiar with any section. Some of the lands had been reduced and sold. They were reclassified in the office.

Q. Were they sold on the same day they were reclassified?

A. I think some were.

Q. Who were they sold to?

A. I don't know.

Q. What was the name of the party who acted as agent for the purchasers?

A. I don't know all of them. Mr. D. Call was there, and was agent for some; but I can't say who bought them.

Q. Did Mr. Call make any presents to any gentleman connected with that department of the office?

A. I only know from hearsay.

Q. Did you ever hear anybody say, that is, a clerk, who received it? Tell what the party said.

Respondent objects, as the party is the court, and the testimony is hearsay.

The Chair holds the testimony hearsay, and not admissible.

David Crockett, being sworn, testified as follows:

TESTIMONY OF DAVID CROCKETT.

Q. You are connected with the General Land Office?

A. Yes, sir.

Q. In what capacity?

A. I am watchman.

Q. What are your duties?

A. My duties are to take charge of and close it during other than office hours.

Q. Outside of office hours?

A. Yes, sir.

Q. What are office hours?

A. Part of the year they are from 8.30 a. m. to 4.30 p. m.

Q. 8.30 a. m. to 4.30 p. m.?

A. Yes, sir.

Q. The office is closed except during office hours?

A. Yes, sir.

Q. Closed; how do you mean? Closed to everybody?

A. Yes, sir; and no business done.

Q. Do you permit persons to go into the Land Office after office hours?

A. No, sir.

Q. Do you know Mr. Schmidt?

A. Yes, sir.

Senator Kearby called attention to so much of the demurrers as have been overruled need not be gone into.

Mr. Henderson: I call attention to the fact that the demurrers are not before me, but think that they were pointed at the acts committed by the Commissioner prior to his re-election.

Mr. Walton: There are two, exceptions reserved. The first alleges matter ante-dating re-election and the other points to impeachment, both of which are sustained. The second and third exceptions are:

2. Contains general allegations of matters and things and acts and facts ante-dating the commencement of the defendant's present term of office, and it affords no matter for his impeachment and removal from the office he now holds, the term of which commenced on the 8th day of November, 1892.

3. All such acts ante-dating his re-election were condoned by such re-election, and now afford no cause for his impeachment and removal from the office he is now holding.

Q. Have you known Mr. N. S. Schmidt subsequent to the 8th of November, 1892?

A. Yes, sir.

Q. Where?

A. Well, I have known him here in Austin.

Q. What business is he engaged in?

A. Well, as far as I know he has been under appointment of Mr. Dorrety of Dallas.

Q. Who is Mr. Dorrety?

A. I don't know him; I suppose a land man.

Q. What has Schmidt been doing here?

A. He has been working for Mr. Dorrety on papers, but I can not say what papers.

Q. Where? In Land Office or capitol?

A. In both.

Q. In public offices?

A. Yes, sir.

Q. State whether or not, since the 8th of November, he has worked at any time in the Land Office?

A. I suppose he has, some.

Q. Has he been admitted to the Land Office after office hours?

A. I believe that he was a while after it was time for me to close the office.

Q. Why was he admitted after office hours when you admitted no one else?

A. As well as I know, he was working for this man and sometimes he was pressed about getting some papers and wanted to stay in the office long enough in order to get this work through by some time, but I don't know on what work it was.

Q. Did you let him in on your own hook?

A. I told Mr. Schmidt that he would have to go out as the others did, and the Commissioner told me Mr. Dorrety was in a hurry and he thought it was best to let him remain in the office awhile.

Q. Did you let him remain until otherwise instructed?

A. I did. I was acting upon the instruction of the Commissioner.

Q. Did the Commissioner detail any clerk to remain with him?

A. He told me not to leave the office when any persons were in there.

Q. Were you told to attend Schmidt when he examined the files of the office?

A. I don't know that he was examining them, but know he was at work there.

Q. Where did you stay?

A. In my room until I close up.

Q. You did not attend upon Schmidt?

A. I was very often with him.

Q. To watch him?

A. No, sir.

Q. You didn't attend to any work he was doing?

A. No, sir.

Q. Did he have access to the papers of the office?

A. I suppose he did, I don't know.

Q. There was nothing to keep him from it, was there?

A. I don't know, sir.

Q. He worked in the sales department; this was open to him, then?

A. Yes, sir.

Q. Now we ask you this question, but don't answer until objection is made. During how long a period of time did Schmidt have this access to the office, before and after the election?

Walton: We have no objection to a

question confined to a time the court has said it will investigate—since the re-election.

Henderson, for State: The court will observe that this is a continuing act, and a part of this act, perhaps, occurred prior to the 8th of November, and a part after, but it was one continuing act, a whole act, and we think, perhaps, the court didn't have this matter in mind, and as now presented in the light of the evidence, the court will see that it is a continuing act, and we can prove that part of the continuing act occurred prior to that time.

Court: Wouldn't each day be a separate act?

A. Strictly speaking, it might be, but when we consider the fact that it occurred to-day, to-morrow and next day and all along in a continuous course, then it becomes a continuing act.

Court: I hardly think that it should be admitted.

Q. Mr. Crockett, did Mr. Schmidt have any other parties in there with him?

A. Not while he was in there working after office hours.

Q. Did you know a man by the name of Williams?

A. Yes, sir.

Q. Was this man admitted to the office?

Walton: We would like for the counsel to confine himself to some limitations.

Q. State whether or not since November 8, last, you have let Williams in the office after office hours?

A. Yes sir, some.

Q. What was he doing?

A. He told me he was copying field notes for some county, but I don't remember the county.

Q. By what right or authority was he permitted to remain in there after office hours?

A. The Commissioner told me the county was in a hurry for the field notes, and to let him remain awhile after office hours.

Q. Is that the only reason he was permitted to remain; wasn't there something said about his being on small salary and wanted to put in time to make wages?

A. I believe there was something said of that sort, or something said about his being on expenses.

Q. Was any clerk detailed to wait on him?

A. No more than myself. The Commissioner told me he was in my room

and I could sorter keep watch on him, and laughed and went out.

Q. In a sort of joking way?

A. I don't know.

Q. Did you keep watch over him?

A. I was in the room up to the time I went to supper, and we went out.

Q. Were your duties of such a nature as to acquaint you with the papers and enable you to keep watch?

A. I think not. I regard my duties to be to close the office after office hours.

Q. He knew you were not familiar with the records?

A. I don't know.

Q. He had access to the records?

A. I suppose so.

Q. You know the county he was making field notes for?

A. I don't remember.

Q. You think he was copying field notes?

A. Yes, sir; the Commissioner told me the county, but I don't remember which it was.

CROSS-EXAMINATION.

Q. Mr. Crockett, how long have you been watchman in the Land Office?

A. Ever since Commissioner McGaughey came into office.

Q. You say Mr. Schmidt was allowed by Commissioner McGaughey to remain in the office some time after the close of the office regularly?

A. Yes, sir.

Q. At what time did you close the office with regard to outsiders?

A. At 4:30 in the evening at the time Mr. Schmidt was working there.

Q. That was long before night?

A. Yes, sir.

Q. Along in the middle of the evening?

A. Yes, sir.

Q. You say Mr. Schmidt applied to the Commissioner and got permission to remain in the office to copy some lease records?

A. I don't know for what purpose.

Q. Were or were not the records he was copying brought down into that room below?

A. He did not work in there.

Q. He was upstairs, was he?

A. Not that I know of.

Q. I will ask you if when the office closes at 4:30 in the evening, if the file room isn't closed and locked with a patent lock and nobody can get in there?

A. Yes, sir.

Q. Can you get in there?

A. No, sir; I think not.

Q. Can anybody—that is, an outsider?

A. No, sir.

Q. These lease records that have been spoken of were being copied down stairs, were they?

A. Yes, sir.

Q. How long was Schmidt permitted to remain there?

A. Generally until we went to supper, from half an hour on to two hours.

Q. What time was that?

A. About 6 o'clock.

Q. Before night?

A. Yes, sir.

Q. So that in all cases—evenings while these parties were allowed to remain there under your watchmanship—the office was closed as to them before night—that is, when you started to supper?

A. I always closed then.

Q. They went out?

A. Yes, sir.

Q. I ask you, Mr. Crockett, if these lease records that Schmidt was copying on were permitted to be carried away; were any ever mislaid at any time, or any missing?

A. I never heard of any.

Q. No injury to the office, was there?

A. Not that I heard of.

Q. Nor to the public service?

A. No, sir.

Q. I ask you about this Mr. Williams. He was allowed to remain in the office and copy some records for some county?

A. Copy field notes for some county.

Q. Where did he stay?

A. In my room at the desk.

Q. Was he allowed up stairs?

A. No, sir; I don't think he went up stairs.

Q. Did he have access to the file records after office hours?

A. No, sir.

Q. Any body else?

A. No, sir.

Q. These field notes that Mr. Williams was copying for this county, that was anxious to get its field notes, were copied in your room down stairs?

A. Yes, sir.

Q. Did any of the field notes ever come up missing?

A. I never heard of it.

Q. Did you hear any complaint of injury to the service?

A. No, sir.

Q. At what time did he go out in the evening?

A. He went out, as I told you some time before, as I did; he always went out as I did, and before night.

Q. Can you fix definitely when the last work was done by Schmidt and Williams?

A. I can't hardly. I think Mr. Schmidt got through his work about the first of December, but am not certain; it might have been later, but that is it as well as I remember.

Q. About what time did Mr. Williams get through?

A. He didn't work a great while—about three weeks.

Q. What time did he finish his work?

A. I think he worked there in November, but am not certain.

RE-DIRECT EXAMINATION, BY MR. HENDERSON.

Q. Did Mr. Schmidt do any work by lamp light?

A. There were one or two evenings it got so dark he had to have a lamp.

Q. You speak of one of these rooms, file room, being locked; it was locked on these evenings?

A. There is a filing clerk who closes it and no one else.

Q. The records and everything are not in the file room, are they?

A. I can't tell.

Q. Then it is a fact that only particular records are kept in there?

A. I have heard that.

Q. Didn't you see any other papers?

A. I suppose so.

Q. You say some other rooms were left open where papers and records were and some had access to them?

A. Of course.

Q. You say you never heard any complaint of any files being taken out of the office or the public injured; did you lose some property?

A. I lost some little instruments draftsmen generally use.

Q. Were they not lost after office hours?

A. I could not say as to that.

Q. Were they not lost during the time Schmidt was working there?

A. Yes, sir.

Q. You recovered them?

A. Yes, sir.

Q. At a pawnbroker's shop?

A. Yes, sir.

RE-CROSSED.

Q. Had Mr. Schmidt pawned them?

A. No, sir.

Q. He had nothing to do with taking them out?

A. No, sir. Not that I know of.

Q. Did Schmidt and Williams take anything?

A. I never knew it if they did.

RE DIRECT.

Q. You don't know who took them?

A. I said if they took them I didn't know it.

Q. If you had known they were

taking anything you would have stopped them?

A. Yes, sir.

Q. What kind of men are they?

A. I don't know much about them.

RE-CROSS EXAMINATION.

Q. They seemed to be nice gentlemen, didn't they?

A. Yes, sir.

Q. Were they the only parties who had access to the office?

A. Yes, sir; up to about that time; but before that a clerk might lack a little of finishing up work and stay a few minutes.

Q. About that time they were the only ones there?

A. Yes, sir.

Mr. Henderson: We now offer in evidence a part of the answer of respondent, as follows:

In answer to the false certificate charged, respondent says. When the acts of selling the lands in Liberty and Harris counties by respondent were being considered in the House at the present session, one of his friends, a member of the House, told respondent that in his opinion, the construction he placed on section 22 was correct and that he expected a fight would be up in the House that evening and that he wanted to be furnished with a map of Liberty county, showing that none of these lands joined or lay contiguous to any unappropriated public lands in that county; respondent's son, who was a clerk in the Land Office, prepared and submitted to Mr. C. W. Pressler, an experienced draftsman in said office of long experience, the map, and he found it correct. This was carried to the desk of respondent to get his certificate to the correctness of the map. Respondent was out, and in his absence he was informed and believed that Chief Clerk Bramlette was requested by said clerk to make the certificate, which he declined to do. Being a matter that was pressing, and a member of the House wanting the map, his son, after search, found this respondent, who himself made the certificate.

W. K. Baylor called by the prosecution:

Q. State whether or not you remember an incident which occurred in the Land Office in the latter part of March in which young McGaughey brought a map to Judge Bramlet to be certified to?

A. I remember that a map was brought up stairs to be certified to and some trouble came up, and he called

me to come over. John McGaughey was talking to him at the time.

Q. Examine this map. (Here a map of Liberty county was offered.)

Mr. Walton: Who was present when this conversation occurred?

A. Judge Bramlette, Jno. McGaughey and myself. I believe that was held admissible under your ruling.

Statement by Major Walton: I desire to object to the testimony as hearsay not had in the presence of the Commissioner. As I understand your ruling when Mr. Bramlette was on the stand, that in view of the fact that the Commissioner had, some little time before that, ordered John McGaughey to fix up the matters for Townsend, that therefore any conversation which took place in his absence, in which John was present, on that subject would be admissible.

Court: My ruling was intended to be this: That the conversations had with John McGaughey while he was transacting the business of his father on that subject would be admissible.

Walton: The situation now is: The Commissioner is absent; John McGaughey has brought a map to the chief clerk, which he has refused to sign, and then this witness is called up and the present conversation is sought to be drawn out. I leave it altogether with the President as to whether the testimony comes within his ruling. If so, we have no objection; if not, why, we would object to it as illegitimate.

Henderson: We call the further attention of the court to the fact that by the statement introduced in evidence by respondent's answer, we have proven his connection with this matter.

Court: I think still, on account of the instructions given, it should be admitted.

Q. I will ask you if that is the map and certificate?

A. No, sir; that is not the certificate; I don't think it is the certificate; if it is, it is changed from the certificate I saw.

Q. How was the certificate worded which you saw?

A. It was worded this way: "I, Wm. Bramlette, Chief Clerk and Acting Commissioner," I think, "do hereby certify that the school lands marked in blue on this map are isolated and detached from other public lands."

This reads: "I, W. L. McGaughey, Commissioner of the General Land Office, do hereby certify that there was no unappropriated public domain touching any of the school lands

marked in blue at the time the sales were made. March 22, 1893.

"W. L. McGAUGHEY,
"Commissioner."

Q. Do you know as a fact when that was made?

A. No, sir.

Q. Don't know when it was prepared?

A. No, sir.

Q. Do you know what became of the map they offered Bramlette?

A. No, sir.

Q. Was your attention called particularly to this certificate?

A. Yes, sir, and I suggested to be changed and he could sign it.

Q. Did you hear the conversation?

A. I did not. I did not hear it all.

Cross-examined by Mr. Lightfoot:

Q. Mr. Baylor, what was the change which you suggested in the certificate?

A. I asked John what he wanted with it.

Answer my question.

A. I suggested that he put "unappropriated public domain."

Q. How many words did you suggest he add to or take from the certificate?

A. I didn't suggest any number.

Q. Well, did you not suggest the addition of one word, that being "unappropriated," and if he did it would make it "unappropriated public domain" instead of "public domain." You thought he could sign it?

A. I don't think so.

Q. You did not say the addition of one word would make it perfect?

A. I don't think I did.

Q. Then, Judge, a statement that you did make that suggestion and he could sign it would not be true would it—you didn't say that?

A. I don't know, I can only state what I think I said.

Q. Tell what you stated.

A. I told John that was not true, and if he would word it to suit the character of land mentioned—it does not adjoin any unappropriated public domain.

Q. What did the certificate state?

A. "I, Wm. Bramlette, acting Commissioner, do hereby certify that the school lands marked in blue on this map are isolated and detached from other public lands."

Q. Judge, don't you know, as a fact, that those lands have been classified in reference to the act of 1887 as public lands, asylum lands and university lands?

A. They are referred to in the act of 1887.

Q. In the act of 1889 they are also referred to?

A. I think they are.

Q. I ask you if a map reading just as you have read, "did not adjoin any unappropriated public domain," wouldn't it be true?

A. I think if it said "unappropriated public domain" it would be true.

Q. Examine that map, and if these school lands adjoin any other public lands state what. Do they adjoin any other public lands?

A. Each adjoins another piece of the land.

Q. Any except school lands?

A. No, sir.

Q. It is a fact that these school lands don't adjoin any other public lands?

A. None except school lands.

Q. You have just stated they were classified into public lands, university lands and asylum lands. Don't that map show the location of the school lands laid down and marked with blue, as the map you saw?

A. I think it is.

Q. Did Judge Bramlette refuse to sign the certificate you suggested?

A. I don't think he did; I don't know.

A. After you made your suggestion is it not true he still declined?

A. I don't know.

Q. Where were you?

A. I was in the room.

Q. Where did John go?

A. I think he went out and I went to my desk.

Q. Did he decline to sign with your suggestion?

The Court: Witness has answered he does not know, and I think that is far enough.

Judge Bramlette called by the prosecution:

Q. Do you know what became of that map and certificate?

A. John McGaughey carried it off.

Q. Did you throw it in the waste basket or tear it up?

A. No, sir.

Q. Examine the certificate on that map and see if it is the same as that tendered you?

A. No sir, it is not.

Q. What difference?

A. As I said on my examination, the word "unappropriated" public domain was not in it.

Q. The main difference was the certificate did not contain the words "unappropriated public domain?"

A. My recollection is that in place of them it contained the words as I gave it this morning, that the sections

marked blue were, when sold, isolated and detached from other public lands.

CROSS-EXAMINATION.

Q. When Judge Baylor suggested that if the word "unappropriated" public domain be inserted in that certificate it would be right—when the question was put to you—if these words were added, would you have signed it?

A. I might; I don't know. I gave my reasons this morning.

Q. Again.

A. In the conversation which occurred with me at first it looked to me like there was an intention to deceive somebody, and I declined to sign it.

Q. Would you have signed the certificate with the word "unappropriated public domain?"

A. If it had been brought to me originally I might.

Q. Would it have deceived anybody at the time you were requested to sign it?

A. I cannot say.

Q. You refused to give to a member of the Legislature a certificate that was true?

A. No member of the Legislature had sent to me.

Q. You understood the order was from a member?

A. Mr. McGaughey so stated.

Q. That was all?

A. Yes, sir.

Q. Mr. Baylor said that with the addition he thought it would be literally true and you refused to sign it?

A. I did.

Q. How are the lands of Texas divided or known in the General Land Office?

A. I don't fully comprehend your question?

Q. I will name them so far as I know and see if that is all: Asylum lands, school lands, university lands, and public lands. What other character of lands are there besides individual or private lands?

A. Unappropriated lands.

Q. What public land is distinguished from public school lands?

A. School lands are public lands according to my construction.

RE-DIRECT.

Q. All other public lands than those classified by other names are placed under unappropriated public domain.

A. Yes, sir. An explanation I desire to make is this: I said this morning that the answer of John McGaughey to me, "that Representative

Townsend said if he could get such a certificate, he would clear my pa," and a remark made by Mr. McGaughey to John made an impression on me. The reason was, that I had heard him tell John to get that matter fixed up for Townsend, and that is why it made a deeper impression on me than it otherwise would.

R. M. Hall, sworn for the State:

Q. Where do you live Mr. Hall?

A. In Austin.

Q. You were two years ago Land Commissioner?

A. I was up to January two years ago.

Q. You held four years?

A. Yes, sir; four years.

Q. State, if you please, the rule and practice with respect to the sales of sections of school lands under the act of '87 and the amendments to that act.

A. Do you mean all the rules or in regard to some particular part?

Q. The rule in reference to section 22.

A. As passed in 1887 it was amended in 1889 at my suggestion. The words inserted in 1889 were simply "without actual settlement." That was the construction I had given it up to that time but I wanted any ambiguity that might exist removed. Under that I held, as the law is clear, that all isolated and detached sections are for sale.

Q. What was the practice when sections were not isolated and detached?

A. Under my construction they were for sale only to actual settlers. That rule is not applied to timbered sections, as they had to be paid for in cash.

Q. By isolated and detached what do you mean?

A. I mean do not touch any other section.

Q. These were the rules and instructions of your office?

A. Yes, sir.

CROSS EXAMINATION.

Q. Mr. Hall, you say your interpretation of detached and isolated lands are those that don't touch any other section of public land, or do you mean any other section of school land?

A. Yes, sir, or asylum or university lands.

Q. Didn't you sell school lands where sections of school lands touched each other?

A. I am informed we did.

Q. I ask you if you didn't sell large bodies of land in that way; that is, didn't you offer a large lot of school land in Medina county?

A. I don't remember.

Q. Didn't you, in Medina county, sell large lots of school lands which touched each other, but no other public lands?

A. I don't know; I can't state whether I sold a section in Medina or not.

Q. Do you recollect any particular lot in Nueces or Stephens counties.

A. Can't say; the records of the office will show.

Q. During your administration were not large lots of school lands sold where they touched each other at the corners and didn't touch any other public lands?

A. I can't tell you; you would have to ascertain from the records, as I have no recollection on the subject.

Q. Who was your chief clerk of the school land department?

A. Mr. Randolph Lawrence.

Q. Who testified yesterday evening?

A. I am told he did.

Q. Wasn't he a very efficient officer in that place?

A. I regarded him as being very efficient.

Q. The sale of school lands made by you were made by Mr. Randolph Lawrence?

A. He was in charge of that department.

Q. You don't know of your own recollection whether he sold these bodies of school lands in Medina, Stephens and Nueces counties where they touched each other?

A. I don't remember; my apprehension is these sales were more made through inadvertence than anything else.

Q. Didn't they cover about eighty counties where the land was put on the market by Randolph Lawrence while he was chief clerk of that department?

A. All school lands in every county in the State were put on the market.

Q. I ask you if during your administration he had charge of that department of the school lands, if he didn't sell or place upon the market eighty counties of school lands, and if he didn't sell a large lot of school lands in these counties which adjoined or cornered on each other under section 22?

A. I don't know that he did.

Q. Did you just leave the matter to him?

A. I did not. I endeavored to keep up closely with that department myself. My construction of the law and my rule was to conduct the office as I have already stated, and any depart-

ures from that were through inadvertence.

Q. Was it possible, while you were Commissioner, for Randolph Lawrence to have placed these lands on the market without your knowledge or consent?

A. I don't think he intended to.

Q. Could he have done so without your knowledge or consent?

A. I don't know, of course I didn't know all his acts.

Q. In making these sales of public school lands, were not the papers usually signed by you?

A. When present, I signed all such work.

Q. I ask you if you did not sign them without knowing what and where they were?

A. I might have made no inquiry upon the subject.

Q. Do you know how many sections of these lands were sold during your administration under section 22?

A. I don't know.

Q. Mr. Randolph Lawrence had full charge of the department, and you suppose some, but can't say how much was sold?

A. I can't say approximately.

Q. During your administration didn't Randolph Lawrence so interpret section 22 of 1887 and amended by act of 1889, that he could sell public school lands which cornered on each other but didn't corner on any other domain?

A. I don't know.

Q. In all counties organized prior to 1875 where lands were classified, dry grazing lands, if they were not so placed upon the market?

A. Not that I am aware of. I know that the question of grazing or agricultural was not a matter of consideration to affect the meaning as to purchasers who could buy.

Q. Did you require actual settlement on grazing lands?

A. It applied to them all the same.

Q. Did you enforce the rule?

A. It was my intention.

Q. You don't know?

A. Perhaps it was not. There is one thing I would like to call your attention to, and it is this: Whether or not lands were isolated and detached was not quite so interesting as now, and where there are millions of acres being sold, some may have been sold through inadvertence.

Q. Do you recollect some lands sold Langerman in Nueces county?

A. I remember he was a purchaser of school lands but don't know where they were.

Q. In how many counties?

A. I don't know.

Q. You know he bought some sections?

A. I don't recollect more than one.

Q. Didn't he buy a number linked together?

A. I don't know.

RE-DIRECT EXAMINATION.

Q. Suppose there were six sections of public school lands which joined each other, but did not touch any other public domain, would they be detached or adjoined?

A. Adjourned, not detached.

RE-CROSS.

Q. What are they adjoined to.

A. To each other.

The prosecution here closed.

L. S. Ross, Jr., for Respondent.

Q. You have been sworn?

A. Yes, sir.

Q. I ask you if you remember the circumstance of Mr. John McGaughey and yourself being called on by a member of the House of Representatives, Mr. Townsend, for a certificate in regard to the lands sold in Liberty County.

A. Yes, sir.

Q. Was any certificate made in compliance with that request?

A. Yes, sir, there was.

Q. Please explain the matter in your own words and explain all about it? Henderson: "Unless it was the certificate tendered to the chief clerk it is not relevant." We will show that.

Court: The request is very general.

Q. I refer to that certificate to which the testimony has been directed.

A. Yes, sir.

Q. Explain about that particular certificate?

A. I wrote it myself.

Q. Which certificate?

A. The one Mr. McGaughey took to Judge Bramlette to sign, and I copied from this certificate here.

Q. Did you write that? (offering the map of Liberty County on which a certificate is written)

A. Yes, sir. The certificate is:

"I, W. L. McGaughey, Commissioner of the General Land Office, do hereby certify that there was no unappropriated public domain adjoining any of the school lands marked in blue, at the time the sales were made.

"W. L. MCGAUGHEY,
"Commissioner."

Q. You say that it is your hand writing?

A. Yes, sir.

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Q. At what time was that made; before or after the other writing?

A. This was made before.

Q. Explain how the other came to be made at all?

A. Well, this certificate was made at the request of Mr. Townsend, and Mr. McGaughey took it to his father to sign, and he was not in the office, and he came back down stairs.

Q. He came back and the other certificate was made, and what did he bring back?

A. He brought this map back.

Q. Signed or not?

A. It was not signed.

Q. Was any other certificate made by you?

A. Yes, sir.

Q. And how was the other certificate written?

A. It was written from this one.

Q. Was there any difference between the two, and if so, explain it?

A. I copied this certificate from the other map.

Q. You copied the certificate that was on the other map?

A. Yes, sir.

Q. What difference?

A. None.

Q. No names different?

A. Yes, sir, Bramlette's name was inserted.

Q. The other was exactly the same as this, except the name Wm. Bramlette, Chief Clerk, was inserted for W. L. McGaughey, Commissioner.

A. Yes, sir.

Q. On what map was the other certificate made?

A. On a Liberty county map.

Q. How marked?

A. Like this.

Q. How do you know?

A. Because it was copied from this.

Q. Did you have anything to do with copying it?

A. I did.

Q. Then the certificate upon the other map was exactly the same character of map and the same certificate except the name of W. L. McGaughey was changed to Wm. Bramlette?

A. Yes; sir.

Q. What was done with the certificate with the name of Bramlette in it?

A. It was destroyed.

Q. It was in your hand writing?

A. Yes, sir.

Q. After it was fixed what was done with it?

A. John took it up stairs to get Judge Bramlette to sign it.

Q. How long was he gone?

A. Three or four minutes or it might have been five, but just a few minutes.

Q. Did he bring it back?

A. Yes, sir.

Q. What was done with the one carried up and brought back; was it signed by him?

A. No, sir.

Q. What was done with it?

A. He tore it up.

Q. You wrote both certificates? and you say they were both the same, except the names were changed?

A. Yes, sir.

Q. What was done with this map?

A. Mr. McGaughey took this map and went to find his father.

Q. When did you see this map again?

A. I have seen it in the last two or three days.

Q. You know it is the same map?

A. I do. I recognize my handwriting.

Q. You say the other was in your handwriting, and also this map and certificate?

A. Yes, sir.

Q. It was the same kind of map and same certificate?

A. Yes, sir.

CROSS-EXAMINATION.

Q. You were writing certificates on a good many maps, were you not?

A. No, sir.

Q. That a part of your duty?

A. No, sir; that was not.

Q. How did you come to be writing this?

A. I was requested by John McGaughey, who asked me if I would not assist him in preparing them.

Q. When McGaughey came back and informed you that Bramlette declined to sign the certificate, there was a good deal of a flurry about the office, was there not?

A. No, sir.

Q. Some remarks made?

A. I said Judge Bramlette would not sign it.

Q. On that day and next there was considerable stir?

A. No, sir; nothing that I observed.

Q. You state to the gentlemen of this Court that the incident attracted no attention?

A. So far as I know, except I heard McGaughey say Judge Bramlette wouldn't sign it.

Q. When was that map destroyed?

A. There that evening.

Q. What was it destroyed for?

A. I don't know, I didn't ask him why. I suppose he had no further use for it.

Q. How did he destroy it?

A. He tore it up.

Q. You have never seen it since?

A. Never have.

Q. It has been inquired for, has it not?

A. Not that I know of.

Q. Didn't the committee inquire for that map and this one was tendered?

A. Not that I know of.

Q. Did you make a literal copy of the certificate of this map on the other, or did you write another certificate in substance?

A. I copied the other certificate from this.

Q. Did he read it?

A. He did not. I copied it from the map.

Q. I notice an erasure on this map.

A. I had misspelled the word "unappropriated." In the last part I had left out a letter.

Q. The date on here is in different ink from the certificate?

A. No, sir.

Q. Look for yourself and see.

A. I don't think that is in different ink.

Q. It looks a little different.

A. Yes, sir.

Q. The date was put on the map when it was made?

A. Yes, sir.

Q. How did it come you dipped into different ink?

A. I have a bottle of black and a bottle of red ink on my desk, and it may be I dipped my pen in the black ink instead of the red.

Q. You don't know whether McGaughey carried the map to Judge Bramlette?

A. I know he left the room with the map we prepared.

Q. But don't know whether he carried it to Judge Bramlette?

A. No, sir.

Q. Judge Bramlette and Judge Baylor would likely know if they saw it? (This question objected to and ruled out.)

Q. Was this done after office hours, or about time to close?

A. My recollection is, it was after 3 o'clock; sometime between that and 4 o'clock. I understood him to say he wanted the map at once.

Question by the Court: At whose request did you write the particular certificate you did for the map requested?

A. At the request of Mr. John McGaughev.

Q. Why was this particular form used?

A. Mr. Townsend stated he wanted a certificate of that kind, if it was a fact that the lands did not touch any

other unappropriated public domain, he wanted a certificate of that fact. That is why it was prepared in that way.

John McGaughey being duly sworn for respondent, testified:

Q. I ask you if you are related to the Commissioner?

A. I am his son.

Q. What position did you hold in the Land Office about the 22d of March of this year?

A. I was clerk in the school land department.

Q. I ask you, Mr. McGaughey, if you recollect anything of a blank certificate carried to Judge Wm. Bramlette to be signed by him?

A. I remember the incident.

Q. Who carried the map to him?

A. I did.

Q. How did it come the certificate was gotten up on the map?

A. By request of Representative Townsend, from Angelina county.

Q. Who was present when the certificate was prepared?

A. I don't know. I can't give the names of all the parties present.

Q. Mr. Ross there?

A. Yes, sir.

Q. Do you know when that was prepared? (Handing him the above referred to map of Liberty county, dated March 22, 1893.)

Mr. Walton: The question was asked a moment ago as to why this particular certificate was put on the map and answered "by request of the party ordering the map." Objection on the other side was withdrawn. There is a question we would like to put and we think it has been opened up by a question put by the court to Mr. Ross, and having been opened, we have a right to what took place. (This was granted.)

Q. Why was that form put on the map?

A. As I understood, by request of Mr. Townsend.

Q. He was a member of the House?

A. Yes, sir.

Q. Was that the character of the certificate he called for?

A. That is my idea drawn from him.

Q. Whose handwriting is that? (Exhibiting the Liberty county map under consideration.)

A. Mr. Ross'.

Q. What became of the certificate with Bramlette's name in it?

A. I tore it up.

Q. What did you do with the first, and how came the other to be drawn up?

A. Well, that would require some

explanation. That (indicating the map before the court) was prepared for my father to sign, but he was not in the office at the time.

Q. What did you do?

A. I went back to my desk and prepared one with the name of Judge Bramlette on it.

Q. Who wrote the certificate in the name of Judge Bramlette on the map?

A. Mr. Ross.

Q. What was the form of the certificate on the other map?

A. Like that one, except in place of the name W. L. McGaughey, Commissioner, was inserted Wm. Bramlette, Chief Clerk.

Q. Who prepared the map?

A. I did.

Q. What kind of a map was it—something similar to that and marked as that is?

A. Yes, sir, it was one of the official maps of Liberty county.

Q. Where did you carry it?

A. To Judge Bramlette's desk, but he was not at his desk at the time.

Q. Was he upstairs or down?

A. Upstairs.

Q. You took it to him and asked him if he would sign it?

A. Yes, sir.

Q. What occurred then?

A. He said, "read it, John," and I handed it to him and he said, "read it, I haven't my glasses."

Q. Did you read it to him?

A. Yes, sir.

Q. Did he sign it?

A. No, sir.

Q. Did he decline to sign it?

A. Yes, sir.

Q. What then with you do with the map he declined to sign?

A. I took it downstairs to Mr. Ross.

Q. What then became of it?

A. I tore it up and threw it in waste basket.

Q. It was a blank certificate to be signed by Judge Bramlette?

A. Yes, sir.

Q. What did you do with the first one?

A. I found my father and got him to sign it.

Q. Where did you find him—in the office?

A. No, sir.

Q. What did you do with it when he signed it?

A. I took it to Judge Townsend at his desk in the Representative Hall.

Q. To whom was it delivered, to him or some one else?

A. To Judge Townsend.

Q. Where was Mr. Chambers at that time?

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A. I don't know that I could state.

Q. That is the map that was delivered (exhibiting the same Liberty county map under consideration, signed by W. L. McGaughey, and dated March 22, 1893)?

A. Yes, sir.

Q. Who furnished the form for that certificate for Mr. Ross?

A. I did.

Q. You furnished the form and he wrote it?

A. Yes, sir.

CROSS-EXAMINED.

By Mr. Henderson: Why didn't you write it?

A. I don't know; I couldn't state any reason.

Q. How long after you prepared the first before you prepared the other?

A. Tolerably soon after.

Q. Was it prepared on the same evening?

A. Yes, sir?

Q. You were in the office when your father left?

A. I suppose.

Q. You knew he was leaving?

A. No, sir.

Q. I ask you if your father ever saw the certificate presented to Judge Bramlette to sign?

A. I didn't present it to him.

Q. Did he ever see it?

A. I don't think he ever saw it at any time.

Q. Isn't it true that your father told you to attend to that Townsend matter?

A. I don't think he did.

Q. Think and see if you can't?

A. I don't remember his telling me that.

Q. You did, however, go and begin the preparation of the map?

A. I did.

Q. It was a matter of some trouble and time, wasn't it?

A. It took some little time.

Q. After you prepared one for your father and he was not there, why did you not have that map used for the chief clerk?

A. You can't use a certificate prepared for the Commissioner for the chief clerk.

Q. You can't sign Commissioner McGaughey as per Bramlette, chief clerk? You couldn't have inserted his name, could you?

A. I suppose so.

Q. You went to the trouble?

A. It might have been mutilated and not looked well.

Q. You were busy at that time?

A. Yes, sir.

Q. These blue and red spots would have probably saved its looks?

A. I don't know.

Q. Where was your father when you got him to sign the certificate?

A. Down at Judge Faulk's office, I think.

Q. Down at Judge Faulk's office?

A. Yes, sir.

Q. That was before the articles of impeachment were presented?

A. I suppose so.

Q. The purpose of this map was to be used in the House by a Representative in favor of your father in the House?

A. The Representative did not particularly state that, but I believed it.

Q. You didn't require any written order for what he wanted?

A. No, sir.

Q. Isn't it true that you believed it would be more beneficial to get this certificate for you father in some name other than his own?

A. No, sir; I wanted it in my father's name.

Q. Didn't you want it in the name of the chief clerk would be better?

A. Not at that time.

Q. You had some little words about the refusal to sign it?

A. Nothing angry.

Q. Wasn't Judge Baylor called up?

A. Yes, sir.

Q. He read it?

A. Yes, sir, he read it.

Q. He spoke as to the number of words to be added?

A. He didn't come up close.

Q. He spoke as to the number of words, didn't he?

A. I can't say.

Q. Didn't he advise Judge Bramlette?

A. I think so.

Q. Didn't he say if the word "unappropriated" was inserted it would be true?

A. No, sir; the certificate shows for itself.

Q. And you tell the Court there was no such conversation between Judge Bramlette and Judge Baylor, that might be made to make it true?

A. There was some mention made of his signing.

Q. And about its being true?

A. They construed this section as not being detached and that it could not be signed for that reason.

Q. Judges Bramlette and Baylor said they would agree to this?

A. I don't know.

Q. If this certificate had been changed to "unappropriated public lands" would it be literally true?

A. The insertion was already there in it.

Q. If the certificate had that in it, why the necessity of any question as to the matter of "unappropriated?"

A. I can't solve it.

Q. And you destroyed it?

A. Yes, sir.

Q. How about unappropriated lands?

A. I didn't know that occurred. They refused in a general way to sign the certificate, and they didn't consider the lands detached, and could not be signed by Judge Bramlette.

Q. Didn't Judge Baylor tell him what change would make it literally true and he might sign it, and then didn't he decline to sign any certificate for you?

A. Yes, sir.

Q. You returned down stairs. How long did you keep the map?

A. Not long.

Q. Was your waste basket carried out that evening?

A. I didn't notice.

Q. There was considerable trouble about it that evening, wasn't there?

A. Not that I heard of.

Q. Didn't you hear something said about the map incident next day?

A. I don't remember, but don't think that there was any talk at that time.

Q. Your office was requested to furnish the original map?

A. I don't remember. I understood it was.

Q. Was not this map here sent over as the map?

A. I don't know that.

Q. You say after you went to Judge Faulk's office and found your father and got him to sign this certificate, you brought it and gave it to Judge Townsend?

A. That is my recollection.

Q. You are quite sure?

A. Yes, sir.

Q. That same evening?

A. I think it was that evening. I remember about sitting down at his desk and explaining it to him.

Q. Isn't it a fact that Judge Townsend was not there when you brought it over and you didn't give it to him?

A. I don't think so.

Q. Did you give it to Mr. Chambers?

A. No, sir.

Q. You are as positive you gave it to Judge Townsend as of anything else you have stated here?

A. Well, Judge Townsend and Mr. Chambers were talking together and I am pretty tolerably sure I gave it to Townsend.

Q. I understood you didn't see Chambers there at all?

A. At the time I gave him the map?

Q. Yes, sir.

A. Well, I didn't know I said that.

Q. Who did you give the map to?

A. My impression is, to Judge Townsend.

Q. It is merely an impression now, is it?

A. I think I did.

Q. You are as certain of that as any other fact?

A. I am certain I gave the map and explained it to him.

Q. Your father knew of this request by Townsend for the map?

A. I don't know that he did.

Q. How did it come about that he called your attention to the Townsend matter?

A. I don't remember, but he called my attention to the Townsend matter.

Q. Has he any other matters in the Land Office?

A. Yes, sir.

Q. Did he have any applications in the office?

A. Yes, sir.

Q. What?

A. Application to purchase timbered land.

Q. Were you looking after them?

A. Not particularly.

Q. He had application to purchase timbered land, and is a friend of your father, but had no application for this map?

A. No application.

Q. A request?

A. He saw me about—

Q. You understood what he wanted?

A. I think I did—yes, sir.

RE-DIRECT EXAMINATION.

(Examined by Col. Lightfoot.)

Q. They have asked you about drawing up this map?

A. Yes, sir.

Q. Was not that the map to which Judge Bramlette had declined to attach his certificate.

A. Yes, sir.

Q. It was not signed?

A. No, sir.

Q. It was torn up and thrown into the waste basket?

A. Yes, sir.

The court adjourned until 3 o'clock p. m.

AFTERNOON SESSION.

Court met pursuant to adjournment. Lieutenant-Governor Crane presiding.

Quorum present.

A. C. Herndon, witness for respondent.

ent, after having been duly sworn, testified as follows:

Q. Where do you reside?

A. In Houston, Harris county, Texas.

Q. How long have you resided there?

A. Up to the present time, about seven years.

Q. What is your business or calling?

A. I am in the real estate business.

Q. I will ask you if you are acquainted with the public school lands in Harris and Liberty counties?

A. Well, I am well acquainted with the lands in Harris county, and in a general way with the lands in Liberty county.

Q. How long have you lived in that section of the State?

A. Well, I was born there forty-six years ago.

Q. State what is the quality and value of the school lands in Harris and Liberty counties so far as you know.

A. Well, the entire body in Harris county are very light sandy lands, wet, and I don't think they are worth \$1.50 per acre. They are neither fit for farming nor grazing.

Q. Is there water on them at any season of the year?

A. After a rain like we had yesterday most of it is under water.

Q. How deep is the water on it or was it last month after that rain?

A. In places the water was three feet deep. Among cow men we would say it was belly deep to a horse.

Q. Is that land suitable for agriculture?

A. No, it is not.

Q. I will ask you if you have dealt in any lands very recently adjoining these school sections?

A. I bought a third of a league at \$1.50 per acre.

Q. How far from the school lands?

A. It adjoins those school lands on the south, on the edge of Fort Bend county, south of the bayou. I have about 8000 acres that cost me from 50 cents to \$1.25 per acre. They are patented lands.

Q. What is the character of the school lands in Liberty county?

A. The most of them are low lands. What they deem to-day their best lands they claim have been redeemed by a wash-out of an old river. At one time the land was five feet under water. I have not been there since. They claim they have been washed out in the last year. I bought land there in January on the railroad at \$2

per acre. They are two sections patented to Addison and Wells.

Q. How would they compare in point of value with school lands?

A. Those lands are on the ridge between two creeks—Cedar bayou and San Jacinto. They are just between the two creeks.

Q. Would their elevation have any effect on their value?

A. Yes, to the farmer.

Q. Do you know sections 22 and 24 on the inside of Davis' pasture?

A. I have not been on those two special sections.

Q. Have you ever been over that part of the ground?

A. Yes.

Q. What are lands worth along where these are?

A. I will tell you it is right hard to say. The lands have really been so cheap there that I would not interest myself in them, and I have handled more acreage than any man in that country. I could not find any money in them.

CROSS-EXAMINATION.

Q. The lands are good enough, are they not?

A. I don't know what you would do with them.

Q. Is it not a fact that there has been no demand for them?

A. No.

Q. If they made a bale an acre would not they be good lands?

A. Yes; first class land.

Q. I am speaking of the Liberty county lands?

A. When I knew those lands they were all under water.

Q. Are they susceptible to drainage?

A. Some of them may be.

Q. Can they be drained at all?

A. Only at a very heavy expense.

Q. Suppose a man can drain a mile for \$3?

A. I would like to give him a job to drain thirty sections.

Q. You don't know how it is about those sections, do you?

A. No.

Q. The lands themselves are good enough, are they not? Don't they contain the washings and alluvium of centuries?

A. Those two sections, may be.

Q. Are they not as rich as a man would want them to be?

A. I don't know.

Q. Is not the chief trouble about the value of the lands the demand for them?

A. Well, now, you are getting a little mixed. They claim that the

lands in Liberty county are very good soil.

Q. Are you able to tell us the value of the lands in Liberty county?

A. I can sell you Liberty county lands to-day at \$1.50 per acre. I will contract to-night to sell 10,000 acres at \$1.50 per acre.

Q. Would not the gentlemen who are acquainted with these lands know more about them than you?

A. They might. I have seen more that don't know anything about them if they saw them.

Q. Do you know Mr. Cameron?

A. I know David Cameron and I know Major Davis. They are both truthful men. They get off a little when they speak of drainage at \$3 per mile. I farmed for fifteen years. I know something about it. I would like to contract for some of that drainage.

Q. These Harris county lands that you speak of, has there not been a railroad constructed in their neighborhood?

A. Yes.

Q. It opens up that country, does it not?

A. I don't know. We always imagine that a railroad is going to do a great deal of good. I am not interested a dollar's worth with those gentlemen down there. I own only a quarter of a section of those lands.

Q. You buy for speculation, don't you?

A. Yes, that is my trade.

Q. You don't propose to buy and pay all the land is worth, do you?

A. I have had no one to complain of my trades.

Q. You look around for opportunities to make on the purchase, don't you?

A. Of course. I would not be in business otherwise.

Q. You sell to the man who is going to make an investment for a home, don't you?

A. He can do as he pleases with the land after he buys it. My purpose in buying is for speculation. Some times I buy for my friends.

Q. These Harris county lands are good for fruit, are they not?

A. I don't think those Houston and Texas Central lands are. I have been all over the county.

Q. What do the Houston and Texas Central sell their lands for?

A. They sell for \$3.

Q. Do you know the names of some gentlemen who have formed a syndicate to establish a fruit town on the plan of Alvin?

A. I don't think there is any formed. I have not heard any talk about it. I sold two sections there for a party to feed on.

Q. Do you know whether or not there was at the time this trouble came up about these lands, a party of gentlemen in Houston and other places getting together who were forming a syndicate for the purpose of putting these lands on the market?

A. I don't think there were any?

Q. Do you know Mr. Crank?

A. Yes, I know Major Crank.

Q. Do you know if he was organizing such a company?

A. He and Dr. Stewart bought about twelve sections, and it was simply an investment. I think they paid 25 or 30 cents bonus. I think they paid \$2.25 per acre. They came to me afterwards and asked me about it. I had been buying for W. D. Cleveland and Dr. Biol. I told Dr. Stewart I thought he had made a bad break.

Q. At any rate people are still dealing in those lands, are they not?

A. Not now.

Q. They were up to the time this trouble came up, were they not?

A. No.

Q. There are other shrewd real estate men down there besides yourself, are there not?

A. Yes.

Ben Hughes, witness for respondent, having been duly sworn, testified as follows:

Before the testimony of this witness began respondent offered in evidence certified copies of the original classification of the Harris county lands. The classification was made by Mr. Davis who was appointed by Commissioner Hall. Classification was made in 1887. Said classification is read to the court and is as follows:

Public Free School Lands, Harris County.—October 31, 1887.

Section.	Block.	Certificate.	Original Grantee.	Watered or Dry.	Agricultural, Grazing or Timber.	Number of Acres.	Price.
SW $\frac{1}{4}$	6	5-168	a H. T. & B. R. R. Co.	Dry	Graz.	640	\$2 00
	6	5-170	b do	Dry	Graz.	640	2 00
	8	5-217	b do	Dry	Graz.	640	2 00
	8	5-254	b do	Dry	Graz.	640	2 00
	10	10-362	b do	Dry	Graz.	640	2 00
	10	5-92	b do	Dry	Graz.	640	2 00
	12	10-363	b do	Dry	Graz.	640	2 00
	12	5-96	b do	Dry	Graz.	640	2 00
	14	10-364	b do	Dry	Graz.	640	2 00
	16	559	b do	Dry	Graz.	640	2 00
	18	5-244	b do	Dry	Graz.	640	2 00
	2	10-417	c do	Dry	Graz.	160	2 00
	2	5-77	d do	Dry	Graz.	640	2 00
	2	5-78	d do	Dry	Graz.	640	2 00
	2	5-165	d do	Dry	Graz.	640	2 00
	2	5-171	d do	Dry	Graz.	640	2 00
	2	5-193	e do	Dry	Graz.	640	2 00
	2	5-194	f do	Dry	Graz.	640	2 00
	2	5-216	f do	Dry	Graz.	640	2 00
	2	5-245	g do	Dry	Graz.	640	2 00
	2	5-251	h do	Dry	Graz.	640	2 00
	2	5-255	i do	Dry	Graz.	640	2 00
	2	5-256	i do	Dry	Graz.	640	2 00
	2	5-268	j do	Dry	Graz.	320	2 00
W $\frac{1}{2}$	2	5-269	k do	Dry	Graz.	640	2 00
	2	5-275	l do	Dry	Graz.	640	2 00
	2	401	l do	Dry	Graz.	640	2 00
	2	597	m do	Dry	Graz.	640	2 00
	2	558	n do	Dry	Graz.	640	2 00
	4	5-166	n do	Dry	Graz.	640	2 00
	4	5-172	n do	Dry	Graz.	570	2 00
	4	5-252	n do	Dry	Graz.	640	2 00
	4	5-267	o do	Dry	Graz.	640	2 00
	4	5-270	p do	Dry	Graz.	640	2 00
	4	309	q do	Dry	Graz.	160	2 00
	16	112	r H. & T. C. R. R. Co.	Dry	Graz.	640	2 00
$\frac{1}{4}$	18	113	r do	Dry	Graz.	.....	2 00
	20	114	r do	Dry	Graz.	.....	2 00
	22	115	r do	Dry	Graz.	.....	2 00
	24	116	r do	Dry	Graz.	.....	2 00
	26	106	r do	Dry	Graz.	.....	2 00
	28	118	r do	Dry	Graz.	.....	2 00
	30	119	r do	Dry	Graz.	.....	2 00
	32	120	r do	Dry	Graz.	.....	2 00
				[October 11, 1887.]			
	34	121	r H. & T. C. R. R. Co.	Dry	Graz.	640	2 00
	36	122	r do	Dry	Graz.	.....	2 00
	46	127	r do	Dry	Graz.	.....	2 00
	48	128	s do	Dry	Graz.	.....	2 00
	50	129	s do	Dry	Graz.	.....	2 00
	52	130	s do	Dry	Graz.	.....	2 00
	54	149	s do	Dry	Graz.	.....	2 00
NW $\frac{1}{4}$	6	104	t do	Dry	Graz.	160	2 00
	8	110	t do	Dry	Graz.	640	2 00
	10	112	u do	Dry	Graz.	640	2 00
	12	105	u do	Dry	Graz.	640	2 00
	14	45-6254	v do	Dry	Graz.	640	2 00
	58	133	v do	Dry	Graz.	640	2 00

Public Free School Lands, Harris County—continued.

Section.	Block.	Certificate.	Original Grantee.	Watered or dry.	Agricultural, Grazing or Timber.	Number of acres.	Price.
60	2	134	<i>v</i> H. & T. C. R. R. Co.....	Dry ..	Graz. ..	640	2 00
62	2	135	<i>v</i> do	Dry ..	Graz. ..	640	2 00
64	2	136	<i>v</i> do	Dry ..	Graz. ..	640	2 00
66	2	137	<i>v</i> do	Dry ..	Graz. ..	640	2 00
68	2	138	<i>v</i> do	Dry ..	Graz. ..	640	2 00
70	...	139	<i>w</i> do	Dry ..	Graz. ..	640	2 00
72	...	150	<i>w</i> do	Dry ..	Graz. ..	640	2 00
74	2	45-6252	<i>w</i> do	Dry ..	Graz. ..	640	2 00
76	...	142	<i>w</i> do	Dry ..	Graz. ..	640	2 00
78	...	143	<i>w</i> do	Dry ..	Graz. ..	640	2 00
80	...	144	<i>w</i> do	Dry ..	Graz. ..	640	2 00
82	...	145	<i>w</i> do	Dry ..	Graz. ..	640	2 00
84	...	146	<i>w</i> do	Dry ..	Graz. ..	640	2 00
86	...	147	<i>w</i> do	Dry ..	Graz. ..	640	2 00
88	...	45-6253	<i>w</i> do	Dry ..	Graz. ..	640	2 00

a. Field-notes for section 8, cer. 5-215, good grazing prairie.

b. Grazing lands, all prairie; dry in dry weather and covered with water in winter months.

c. Low, flat, crawfish prairie.

d. All prairie and suitable for grazing only.

e. Fine grazing near Clear creek.

f. Flat prairie, grazing.

g. Low, flat prairie.

h. Black prairie, good grazing.

i. Sandy prairie.

j. Sandy prairie, grazing.

k. Black, hog-wallow prairie.

l. Flat prairie.

m. No field-notes in Harris county surveyor's office.

n. Sandy prairie.

o. No field-notes of record in Harris county surveyor's office.

p. Straddles G. H. & H. R. R.; flat prairie.

q. Wet, low marsh.

r. These lands are all flat prairie lands lying in the northwestern portion of the county, and are suitable for grazing only. The soil is sandy and poor quality; no water nor timber; water can be had at a depth of from 15 to 30 feet.

s. Same as from 16 to 46.

t. Grazing lands; low, flat in basin of the head of Little White Oak bayou; no timber; marshy and flat.

u. Prairie glades, suitable for grazing only; poor sandy land.

v. Poor lands and poor grass; water at from 25 to 40 feet; same as Cer. 112; Ent. 11-2-87.

w. Poor sandy prairie, suitable for grazing only; water at from 25 to 40 feet depth; lies perfectly level.

GENERAL LAND OFFICE, AUSTIN, TEXAS, May 2, 1893.

I, Andrew J. Baker, Commissioner of the General Land Office of the State of Texas, do hereby certify that the foregoing four pages are true and correct copies of the records of this office.

In testimony whereof I hereunto set my hand and cause the impress of the seal of said office to be affixed the day and date last above written.

ANDREW J. BAKER, Commissioner.

Respondent offers in evidence certified copies of the classification of Liberty county lands.

Same is read to the court and is as follows:

Public Free School Lands, Liberty County.—October 1, 1887.

Sec.	Blk.	Certificate	Original Grantee	Watered or Dry.	Agricultural, Grazing or Timber	Number of Acres	Price
4		768	a H. & T. C. R'y Co..	Dry.....	Grazing...	640	\$2 00
6		769	a .....do	Dry.....	Grazing...	640	2 00
8		770	a .....do	Dry.....	Grazing...	640	2 00
10		771	a .....do	Dry.....	Grazing...	640	2 00
12		772	b .....do	Dry.....	Grazing...	640	2 00
14		773	c .....do	Dry.....	Grazing...	640	2 00
16		774	c .....do	Dry.....	Grazing...	640	2 00
18		775	c .....do	Dry.....	Grazing...	640	2 00
20		776	c .....do	Dry.....	Grazing...	640	2 00
22		777	c .....do	Dry.....	Grazing...	640	2 00
24		778	d .....do	Dry.....	Grazing...	640	2 00

a. Flat prairie; soil, gray sandy loam; no permanent water; good grass, covered with water during the rainy seasons; suitable for grazing only.

b. Same as above. Part in Jefferson county.

c. Sections 14, 16, 18, 20 and 22 same as section 4.

d. Same as from 4 to 22, Houston and Texas Central Railroad Company. About four-fifths of this section is in Chambers county.

GENERAL LAND OFFICE, AUSTIN, TEXAS, May 2, 1893.

I, Andrew J. Baker, Commissioner of the General Land Office of the State of Texas, do hereby certify that the foregoing page is a true and correct copy from the records of this office.

In testimony whereof I hereunto set my hand and cause the im-
[SEAL.] press of the seal of said office to be affixed the day and date last above written.

ANDREW J. BAKER, Commissioner.

Public Free School Lands, Liberty County.

Section.	Block.	Certificate.	Original Grantee.	Watered or dry	Agricultural, Grazing or Timber.	Number of Acres.	Price.
162		25-1370	a H. & T. C. R. R. Co.....	Dry...	Graz..	640	\$2 00
164		25-1371	b .....do	Dry...	Graz..	640	2 00
166		25-1372	b .....do	Dry...	Graz..	640	2 00
1125		1349	c Thomas B. Drake.....	Dry...	Graz..	640	2 00
1126		1450	d Thomas H. Wheeler.....	Dry...	Graz..	640	2 00
2		451	e T. & N. O. R. R. Co.....	Dry...	Graz..	640	2 00
S. ½	4	....	170 e .....do	Dry...	Graz..	640	2 00
12		166	e .....do	Dry...	Graz..	640	2 00
14		165	e .....do	Dry...	Graz..	640	2 00
16		164	e .....do	Dry...	Graz..	640	2 00
18		163	e .....do	Dry...	Graz..	640	2 00
24		160	e .....do	Dry...	Graz..	640	2 00
28		158	e .....do	Dry...	Graz..	640	2 00
30		157	f .....do	Dry...	Graz..	640	2 00
32		156	g .....do	Dry...	Graz..	640	2 00
34		155	g .....do	Dry...	Graz..	640	2 00
36		154	g .....do	Dry...	Graz..	640	2 00
38		153	g .....do	Dry...	Graz..	640	2 00

a. Low prairie land, good grass. no permanent water, no timber; soil black, stiff and sticky; water at 20 feet.

b. Same as section 162.

c. Prairie, land black and gray sand, no timber, no permanent water, grass good, water at 20 feet. A part of this section could be cultivated, but the soil is poor quality.

d. Same as 162, 164, 166, H. & T. C. R. R. Co.

e. Same as above.

f. Low prairie land, no permanent water, soil black and sticky, suitable for grazing only, grass good, water at 20 feet.

g. Same as above.

GENERAL LAND OFFICE, AUSTIN, TEXAS, May 2, 1893.

I, Andrew J. Baker, Commissioner of the General Land Office of the State of Texas, do hereby certify that the foregoing two pages are true and correct copies from the records of this office.

In testimony whereof I hereunto set my hand, and cause the [SEAL.] impress of the seal of said office to be affixed the day and date last above written.

ANDREW J. BAKER, Commissioner.

Testimony of Ben Hughes, witness for respondent:

Q. I will ask you, Mr. Hughes, if you held any position in the Land Office during the Hall administration?

A. Yes.

Q. What was it?

A. For the greater part of the time I was there I was corresponding clerk, and my duties were to answer the correspondence in the office on the subject of public free school lands, university and asylum lands.

Q. Do you know of any lands being placed on the market during Mr. Hall's administration where there were blocks of school land near each other, like those on this map, adjoining each other like these on this map, being offered for sale under section 22 of the acts of 1887 and 1889? Were you there when that act went into effect?

A. Yes, I received my appointment about that time.

Q. What was the custom of the office in regard to the sales of these lands? With regard to the placing of these lands on the market?

A. It was generally understood that the Commissioner of the General Land Office had considerable latitude in which to use his discretion in putting these lands on the market.

Q. State what was done.

A. I will state that lands were placed on the market under provisions of section 22 of the act of 1887 in a great many counties, regardless of their position to each other.

Statement by relators: The facts of these being placed on the market would be shown by the record, would it not? We object because what he states is shown by the records.

Respondent's reply: They introduced Mr. Hall on that subject and we have a right to reply to that. We are showing the facts as to what lands

were offered for sale, and the rules of the office. The rules of the office are a little indefinite. We are showing what has been the practice in the office.

By relators: There might be excuse for this testimony if they offer to prove sales in any particular county, but not such sweeping statements as this.

By the Chair: The records are the best evidence.

By respondent's counsel: Your Honor will remember that the prosecution opened the door as to what was the custom in the office.

By the Chair: Was there any objection to that?

Answer by respondent's counsel: No. Still we have a right to reply to it. Mr. Lawrence was introduced by the State and he stated the custom, and the State having opened the door we have a right to show what was done. The records in the Land Office will show only actual sales and not the custom of the office.

By the Chair: The Chair rules that so far as the custom of the office is concerned this witness can be interrogated on that, if he knows.

Q. What was the custom of the office in regard to sales of these lands or putting them on the market?

A. The rule of the office in putting these lands on the market for sale under section 22 was to investigate as to the character of the lands that were shown to be in the counties by the classifications that were made, and if as a result of that investigation it was ascertained that the lands were not suitable for agricultural purposes they were placed on the market under section 22.

Q. Upon investigating and finding that the lands were not suitable they were placed on the market under section 22, were they?

A. Yes.

Q. Without regard as to whether the party was an actual settler or not?

A. Yes. Well, the act of 1887 gave the actual settler six months preference to buy in if he was on the land. He had a preference for six months after the lands were placed on the market. He had six months after the application was made.

Q. How many counties in the State were placed on the market under that rule?

A. A great many. Nearly all of the old settled counties.

Q. Please name some of them.

Question by Chair: Is it a matter of record which counties were placed on the market?

Answer by respondent's counsel: He can speak to it as a fact, if he was there.

By the Chair: Go on.

Q. Do you know anything of the lands in McMullen county? Please examine this map here. Please notice those marked red and tell us what they are.

A. Some of those I identify as school lands, beyond question.

Q. How do you identify them?

A. Because they are included in a block of railroad surveys and they are even numbers.

Q. Are not all of those marked red even numbers?

A. Here is one that is not. In fact, here are two that are not. One seems to be an alternate or Confederate scrip location, but I recognize them as school surveys, because the map states it. It has the word "State" written across it.

Q. All those in red on that map are school surveys are they not?

A. I could not swear that all of them are. To the best of my judgment they are. I am positive that some are.

Q. Under the rulings of the Land Office, were the lands similarly situated to that body on the market under section 22?

A. These very lands were placed on the market—the lands in McMullen county were.

Q. Do you know any other counties in which they were placed on the market?

A. The school lands in Webb county were placed on the market.

The Chair here holds that the records are so easily accessible that they should be produced and the respondent can get them, as they are accessible.

Q. Please state how the records

would designate these lands placed on the market? What record is there of it in the office?

A. For the convenience of the clerks in the school land department we had a printed list of all the counties in the State, such as in the Comptroller's office. It is pasted on a piece of pasteboard, and opposite the name of the county that was placed on the market under section 22 the figures "22" were written opposite the county.

Q. What did you call that list?

A. I don't know that the list had any particular name. It was just kept there in the department for the use of the clerks.

Q. Is that list there yet?

A. I don't know; I could not say.

Respondent asks the court for a subpoena "duces tecum" for the chief clerk with the list.

Q. Does the record show the number of sections in each county offered for sale in that way, or do you have to go to the map?

A. No, you have to take the list of classifications to ascertain that fact.

Q. Would the list of classifications show it?

A. Each section of land would be included in the classification. Each section that was placed on the market would appear in that list.

Q. It would appear on the list of lands such as we have here, would it not, showing original grantee, section, block, whether watered or not, number of acres, price and classification?

A. Yes.

Q. It would not show the number of acres which had been offered in that county, would it?

A. You would have to take each section and show it.

Q. Does not the map show plainly the number of acres offered for sale in each county?

A. Yes, but you would have to identify them on the map. By comparing the map with the list of classifications and ascertaining from the files if the certificate number is correct and the acres and distance as indicated by the field notes.

Q. Could you not tell without looking at the map whether a section was school land or not?

A. Yes, whether it was school land or not; that is, whether it was originally surveyed for the public school fund.

Q. Can you take that map of Medina county and tell the public free school lands from other lands?

A. I think I could point out the school land surveys on the map.

Q. Will you point them out; some of them?

A. Those colored in red appear to be school land surveys.

Q. I will ask you if you know anything of a purchase made by Mr. Langerman, of school lands in that county during Mr. Hall's administration?

A. No, I don't know that.

Q. You say all of these sections in Medina county that you see marked red are sections that you recognize on the map as school land?

A. Yes, I don't see any that I recognize as not school land.

Q. Was it not the custom of the Land Office to mark maps that way, showing school land, to send out?

A. Yes, when asked for by the parties in the correspondence, it was frequently done.

W. W. Williams, witness for respondent, having been duly sworn, testified as follows:

Q. Mr. Williams, where do you live?

A. In Austin, Travis county, Texas.

Q. How long have you lived here?

A. About 14 or 15 months.

Q. I will ask you how long you have been in Texas?

A. About 47 or 48 years.

Q. I will ask you if you have been working at any time during the last year in the Land Office after office hours?

A. Yes, sir.

Q. State what you were doing and how you came to be doing it?

A. I was copying field notes for Hall county, and the commissioners were in a great hurry to get the work done, and they were pushing Col. McGaughey to have the work finished up, so I asked him to allow me to work until longer in the evening than the usual hour. I was getting up the field notes for Hall county.

Q. How long had Hall county been organized?

A. It was a new county.

Q. Who were you getting them up for?

A. For the commissioners for the county.

Q. You made application to Col. McGaughey to allow you to work longer than office hours?

A. Yes.

Q. What were the office hours as a rule?

A. Half past 4 in the evening.

Q. Were you sworn in as a clerk before you were allowed to do it?

A. Yes.

Q. What part of the Land Office did you work in?

A. In the lower story, where the night watchman sleeps and keeps his bed.

Q. Where was the file department?

A. That was up in the second story.

Q. Was that locked or was it open after office hours?

A. I think it was locked. I don't remember ever going up there after office hours.

Q. Did you have any occasion to use any of the files up there after office hours?

A. None whatever.

Q. Your work was confined to the lower room and to transcribing the field-notes for this county, was it?

A. Yes.

Q. When did you begin that?

A. Some time in June; perhaps about June 15 or June 20, last year.

Q. How long did it continue?

A. I finished about August 10, I believe; perhaps August 15. I finished up the work about the time of the convention.

Q. Did you after that continue to go to the office after office hours?

A. No.

Q. It only covered a short period of time, from June 15 to August 18, and after that you did not go there after office hours, did you?

A. No. When I got that work done I did not go there after office hours, except to drop in once in a while during office hours.

Q. Did you investigate, examine or have anything to do with any papers while there, except the field notes you were copying?

A. No.

Q. Did you in any way interfere with any property there, excepting to get the field-notes?

A. No.

CROSS-EXAMINATION.

Q. Were you an employe of the office?

A. I was employed by Col. McGaughey to do this especial work.

Q. How could you have been employed that way? On what list of clerks were you carried?

A. I don't know. The county paid me.

Q. Did you get the Land Office fees?

A. Yes. There was a certain contract that the Commissioner made with the county. They paid it to me through him. He gave me the fees to do the work.

Q. Do you know if he was in the habit of doing that sort of work?

A. I don't know. There were one or two men there copying field-notes, but they had contracts with the commissioners court themselves.

Q. These field-notes were under the hand and seal of the Commissioner, were they not?

A. Yes; the work was all compared by one of his clerks.

Q. The office was open, except the file room, when you were there, was it not?

A. I don't know. I never did go upstairs after office hours. I worked till I got tired and quit.

Q. There was nothing to keep you from going upstairs, was there?

A. No, I had free excess except to what was under lock and key. The watchman was there to watch the building. Sometimes he would come in and go out and would be about the building somewhere.

RE-DIRECT EXAMINATION.

Q. The doors of the file room were locked, were they?

A. That was what I was told. I don't know; I never went upstairs.

N. S. Schmitz, witness for respondent, having been duly sworn, testified as follows:

Q. Where do you reside?

A. I live in Austin at present.

Q. How long have you lived here?

A. I have been here since December, 1891.

Q. I will ask you if any time during last year you were engaged in any work in the Land Office, and if so state what it was?

A. I came down here to make some copies of leases in the Land Office. I presented my credentials on the first day of January, and then I worked a few days and business took me to the Comptroller's Office, and I resumed the work in the Land Office about the first of July, and I made copies of all the leases in the Land Office, working at it off and on till about October 10th.

Q. You worked at it till October?

A. Yes, until the 10th or 11th of October.

Q. Did you ever work there any after that time?

A. The books that I was using were in use a good deal during office hours, and I requested Colonel McGaughey to allow me to work after office hours so I could do a full day's work. He did it.

Q. How late in the evening did you work?

A. Till about 6 o'clock.

Q. Over how long a period did that

extend? When did you first begin working in the evening?

A. Until the work was completed. I could not do hardly any work till after office hours. The work was completed on October 11.

Q. How do you fix the date as October 11?

A. I had a large register in which I kept these leases, and that was the day I sent the register off by express. That was October 11, 1892. After that I did not do any more work there.

Q. While you were at work there, I will ask you if you interfered with any papers there outside of those you were working on?

A. No sir.

Q. I will ask you if you had access to any other papers or to the file room after office hours?

A. No sir.

Q. The file room was closed when?

A. When the office closed.

Q. Were you ever in the file room after office hours?

A. No, nor any other time. I never was in the file room.

Q. Did you ever in any way interfere with any property there?

A. No.

CROSS-EXAMINATION.

Q. You were making copies of the leases of record, were you?

A. Yes.

Q. Were they certified copies?

A. No.

Q. Just examined copies?

A. Yes.

Q. The Commissioner did not certify to them?

A. No.

Q. Were you sworn in as a clerk?

A. No.

Q. You say you did not have access to the file room where all the records of the Land Office are kept?

A. No.

Q. The other rooms are full of Land Office records, are they not?

A. I was in the charge of the watchman and he could prevent me from going into the other rooms if I had wanted to go.

Q. The only thing then between you and these records was the watchman was it?

A. I expect so.

Q. Was he there all the time? When he was not there, there was nothing between you and the records was there?

A. No.

Q. Did you not continue on there after October 11.

A. No, not after office hours.

Q. Did you not hold over after office hours occasionally?

A. No.

Q. Did not the watchman at first tell you you had to quit, and did you not get miffed about it?

A. The watchman told me I had to quit, and I went to Col. McGaughey to get permission. I did not get miffed about it.

Q. You had another man working there with you, did you not?

A. For a few days, but not after office hours; he could not be hired to work after office hours. He did not work much during office hours either.

Q. You say he did not work after office hours?

A. No, he did not.

Q. Do you know if he got any of the Land Office property or not?

A. No.

Q. Did you not hear about it?

A. No.

Q. What was his name?

A. Warren.

Q. Did you not work sometimes by lamp light?

A. No.

Q. You never did?

A. No sir.

Ben Hughes recalled by the respondent:

Q. I will ask you to examine and state what this is?

A. It looks like the list that I referred to awhile ago, excepting that my recollection was that it had a paste-board back, but I am not positive about that.

Q. Will you be kind enough to notice the marginal entries "22" and state what that refers to?

A. That refers to school lands that were placed on the market under provision of section 22 of the act of 1887, and also section 22 of the act of 1889, amendatory of the act of 1887.

Q. I will get you to examine this book; what is it?

A. It is a record of the General Land Office. I recognize that as a book that was kept by the chief clerk of the school land department in which he noted the dates that classifications were made and notice sent out to the county clerks.

Q. Does that show any of the counties in which the school lands were offered for sale under section 22 under the acts of 1887 and 1889?

A. Yes.

Q. Name some of them?

A. First is Atascosa, next is Anderson.

Q. Is Medina county on that list?

A. Yes sir; all the lands there are offered for sale under section 22.

Q. Is McMullan county in that list?

A. Yes sir.

Q. What other counties name some of them?

A. The counties are Atascosa, Anderson, Aransas, Austin, Bowie, Brazoria, Bexar, Bee, Burnet, Bastrop, Bosque, Blanco, Brown, Cook, Clay, Coryell, Caldwell, Comanche, Coleman, Cherokee, Cass, Collin. Callahan was placed on the market under section 22 and afterwards changed to general instructions. Comal, Colorado, Calhoun, DeWitt, Delta, Erath, Eastland, Fannin, Frio, Franklin, Gillespie, Galveston, Goliad, Guadalupe. Hardin county was changed from general instructions to section 22, also Grayson, Gonzales. There is a note here that says that Hardin county was changed to section 22 on February 17, 1890. Hays, Hunt, Hamilton, Hood, Harrison, Houston, Harris. The notifications were sent out on the dates noted here. Jack, Johnson, Jasper and Johnson. Karnes, Kaufman, Lamar, Limestone, Llano, Lampasas, Leon, Live Oak, Mills, Montague, Medina, Menard, Maverick, Mason, Morris, Matagorda, Montgomery, McCulloch, Mills, McLennan, Nacogdoches, Navarro, Orange, Polk, Parker, Palo Pinto, Red River, Robertson, Stevens, Shelby, Shackelford, San Jacinto, San Patricio, Shackelford, San Augustine, Titus, Travis, Tarrant. Throckmorton first placed on the market under provisions of section 22 and afterwards changed to general instructions on February 11, 1889. Classifications were originally made and filed in the county clerk's office, May 30, 1888, and December 12, 1888. Changed to general instructions February 11, 1889.

Q. Please state what you mean by general instructions and section 22.

A. I mean by section 22 that lands were placed on the market for sale not requiring actual settlement, and general instructions required actual settlement.

Q. Acting on this record, you say you were one of the clerks in the department at the time you say these lands were sold in accordance with that report?

A. Yes; if a party would send in an application of purchase for school lands under section 22, or if they wrote a letter asking if lands were for sale not requiring settlement in any county, I would consult that letter, and if I found that the county was listed section 22 I would advise him he could

buy without actual settlement, or vice versa.

CROSS-EXAMINATION.

Q. I notice in this book you keep columns for the names of the county and columns for the date on which the notice is filed with the clerk.

A. Yes.

Q. You called over a number of counties in which you stated that lands were put on the market under section 22; do you mean to say all the lands in the county were put on the market under section 22, or such lands as were described in the notices sent out to the county clerks?

A. Only those described in the notices sent to the clerks. In a few instances there were some counties that part of the lands were placed on the market under section 22 and some under general instructions.

Q. Can you distinguish those counties on this list?

A. Yes.

Q. How?

A. I would refer under the head of general instructions to see if any classifications had been sent out under general instructions in that county.

Q. Is it not a fact that these notices contained a list of the lands offered for sale and the terms offered?

A. Yes.

Q. This book does not show those counties does it?

A. Yes. It shows the time sent out and under what instructions they were placed on the market, that is under what instructions the lands included on the list sent out that day.

Q. You sent out a list at different times?

A. Yes.

Q. You did not send all counties the same list?

A. No. Perhaps a dozen sections would be classified in Travis county in one day. Say, for instance, on the 4th day of May a dozen sections of land would be classified in Travis county. Perhaps on the 4th day of September next a dozen more would be classified, and then a list of each would be sent out to the clerk of the county.

R. That does not show the land in that book, does it?

A. It is a record of the lists of classifications that were made and sent out.

Q. You don't mean to say that in any of the letters to those counties that all of the lands were attached?

A. I mean that some of the lands were attached.

Q. Give some instances.

A. I can't give you an instance, but I know it of my general knowledge. There is a record in existence that will show. The records of the Land Office will show that fact.

Q. In respect to the Harris county lands, you don't undertake to say that all the lands in that county were put on the market under section 22?

A. No; a portion was under section 22, and a portion under general instructions. Many of these counties here marked section 22, only had two or three sections of school land in them.

Q. How many of that kind were there?

A. There might have been forty or fifty.

Q. You don't mean to say that this list includes all those sections when sent out?

A. No, not any particular list.

Q. In very near all of those counties that you called off I notice cross entries under general instructions?

A. Yes. I think there were not exceeding six counties placed on the market under both section 22 and general instructions.

Q. You stated that there was a record kept of those lists that would show what lands were put on the market?

A. Yes, the lists themselves are in the Land Office. The lists furnished the county clerks were mere copies; the originals are retained in the Land Office as records.

RE-DIRECT EXAMINATION.

Q. They merely send out certified copies?

A. Yes.

Q. What position did you hold?

A. Corresponding clerk, and my duties were to answer correspondence pertaining to school land.

Q. Was it not a part of your duty to answer communications and to send out these instructions to the county clerks?

A. No; I did not send out the instructions.

Q. Who sent them out?

A. Mr. Lawrence sent them out under his supervision. My desk was upstairs. Mr. Lawrence was chief clerk of the school land department.

Q. You say you do know many of the lands offered for sale in those counties did join?

A. Yes, I know it of my own knowledge.

RE-CROSS-EXAMINATION.

Q. You could not particularize, could you?

A. No.

Q. You said when any counties were placed on the market the office first inquired and informed itself if the lands were suited for agriculture or not?

A. Yes. It got this information from the classification itself.

Q. Did it seek further information?

A. No. That was the only source from which they got their information.

Q. That is when the classifications were there they did?

A. Yes. The classifications were detailed reports.

RE-DIRECT EXAMINATION.

Q. The office went by the classification in making sales, did it?

A. Yes.

Respondent offers the book in evidence in connection with this witness' testimony.

Respondent offers in evidence the official, original and amended classifications of Jasper and Newton counties timber and land.

They were made by Mr. Kellie.

Relators object if they are read as classifications, because they are not made in accordance with law.

Question by the chair: What is the purpose of this testimony?

Reply by respondent's counsel: The purpose is that they have attacked the sales made in those counties of certain lands, I presume on the ground that the sales were not made in accordance with law. We desire to show that they were reclassified and sold under the reclassification.

By relator: Our objection is that if it is offered as reclassification it is not official and is not made in accordance with law. If it be offered as information upon which the Commissioner acted in reducing the prices of these lands, that may bring up a different question.

Question by the Chair: Will you be willing to admit it for the purpose of showing what information the Commissioner acted on?

Relators: Yes.

Respondent: It is offered as a certified copy of an official act.

By the Chair: It will be admitted for such weight as the Court will give it.

Said classifications are read to the Court, and are as follows:

Part of public free school land of Liberty county. For office—classified and appraised by Joe W. Davis. County clerk Liberty county, January 3, 1888. Filed by clerk January 5, 1888.

Public Free School Lands, Liberty County.

Section.	Certificate.	Original Grantee.	Watered or dry.	Agricultural, grazing or timber.	Number of acres.	Price.	Price—Timber only.
16	3445	G., C. & S. F. R. R. Co.	Dry....	Timber.	640	\$5 00	\$3 00
18	3446	 do	Dry....	Graz ...	640	2 00	.....
20	3585	 do	Water'd	Graz ...	640	3 00	.....
22	3586	 do	Dry....	Graz ...	610 4-5	2 00	.....
24	3587	 do	Dry....	Graz ...	675 1/4	2 00	.....
26	3277	 do	Dry....	Graz ...	640	2 00	.....
28	3444	 do	Dry....	Graz ...	640	2 00	.....
30	3443	 do	Dry....	Graz ...	640	2 00	.....
32	3447	 do	Dry....	Graz ...	640	2 00	.....
34	3271	 do	Dry....	Graz ...	640	2 00	.....
36	3272	 do	Dry....	Graz ...	640	2 00	.....
38	3273	 do	Dry....	Graz ...	640	2 00	.....
1130	1214	H., E. & W. T. R. R. Co.	Dry....	Graz ...	439 1/3	2 00	.....
6	10-394	H. T. & B. R. R. Co.	Dry....	Graz ...	640	2 00	.....
8	10-395	 do	Dry....	Graz ...	640	2 00	.....
W 1/2 12	10-390	 do	Dry....	Graz ...	320	2 00	.....
14	10-389	 do	Water'd	Timber.	320	5 00	3 00
S 1/2 14	10-406	 do	Dry....	Graz ...	320	2 00	.....
16	10-407	 do	Dry....	Timber.	640	5 00	3 00
4	768	H. & T. C. R. R. Co.	Dry....	Graz ...	640	2 00	.....
6	769	 do	Dry....	Graz ...	640	2 00	.....
8	770	 do	Dry....	Graz ...	640	2 00	.....
10	771	 do	Dry....	Graz ...	640	2 00	.....

9--Ct. Jour.

Public Free School Lands, Liberty County—continued.

Section.	Certificate.	Original Grantee.	Watered or dry.	Agricultural, grazing or timber.	Number of acres.	Price.	Price—Timber only.
12	772	H. & T. C. R. R. Co.....	Dry....	Graz...	640	2 00	.....
14	773	 do	Dry....	Graz...	640	2 00	.....
16	774	 do	Dry....	Graz...	640	2 00	.....
18	775	 do	Dry....	Graz...	640	2 00	.....
20	776	 do	Dry....	Graz...	640	2 00	.....
22	777	 do	Dry....	Graz...	640	2 00	.....
24	778	 do	Dry....	Graz...	640	2 00	.....
150	25-1357	 do	Dry....	Graz...	640	2 00	.....
152	25-1358	 do	Water'd	Timber.	640	5 00	3 00
154	25-1359	 do	Water'd	Timber.	640	5 00	3 00
156	25-1360	 do	Water'd	Timber.	640	5 00	3 00
158	25-1361	 do	Dry....	Timber.	640	5 00	3 00
162	25-1370	 do	Dry....	Graz...	640	2 00	.....
164	25-1371	 do	Dry....	Graz...	640	2 00	.....
166	25-1372	 do	Dry....	Graz...	640	2 00	.....
196	26-1592	 do	Water'd	Timber.	640	5 00	3 00
192	26-1590	 do	Water'd	Timber.	640	5 00	3 00
40	825	Texas Central R. R. Co.	Dry....	Graz...	640	2 00	.....
2	451	T. & N. O. R. R. Co.....	Dry....	Graz...	640	2 00	.....
2	534	 do	Dry....	Timber.	640	5 00	3 00
S $\frac{1}{2}$	4	170	Dry....	Graz...	320	2 00	.....
4	452	 do	Dry....	Graz...	640	2 00	.....
W $\frac{1}{2}$	4	588	Water'd	Timber.	320	5 00	3 00
6	589	 do	Dry....	Graz...	640	2 00	.....
12	166	 do	Dry....	Graz...	640	2 00	.....
12	595	 do	Dry....	Graz...	640	2 00	.....
14	165	 do	Dry....	Graz...	640	2 00	.....
16	164	 do	Dry....	Graz...	640	2 00	.....
18	163	 do	Dry....	Graz...	640	2 00	.....
28	158	 do	Dry....	Graz...	640	2 00	.....
30	157	 do	Dry....	Graz...	640	2 00	.....
32	156	 do	Dry....	Graz...	640	2 00	.....
34	155	 do	Dry....	Graz...	640	2 00	.....
36	154	 do	Dry....	Graz...	640	2 00	.....
42	846	 do	Dry....	Timber.	640	5 00	3 00
6	42	Wash. County R. R. Co.	Dry....	Graz...	640	2 00	.....
8	43	 do	Dry....	Graz...	640	2 00	.....
10	44	 do	Dry....	Graz...	640	2 00	.....
12	47	 do	Dry....	Graz...	640	2 00	.....
14	48	 do	Dry....	Graz...	320	2 00	.....
16	54	 do	Dry....	Graz...	640	2 00	.....
18	51	 do	Dry....	Graz...	640	2 00	.....
20	52	 do	Dry....	Graz...	640	2 00	.....
22	53	 do	Dry....	Graz...	640	2 00	.....
2	1796	B. S. & F.....	Water'd	Timber.	640	5 00	3 00
1002	*33-100	J. Poiteveat.....	Dry....	Graz...	640	2 00	.....
CONFEDERATE SCRIP.							
1020	791	Medora A. Harris.....	Dry....	Graz...	1280	2 00	.....
1125	1349	Thomas B. Drake.....	Dry....	Graz...	640	2 00	.....
1126	1450	Thomas H. Wheeler.....	Dry....	Graz...	640	2 00	.....
1128	106	Margaret Nevars.....	Dry....	Timber.	807	5 00	3 00
1008	1285	D. E. Neville.....	Dry....	Graz...	640	2 00	.....

* Duplicate of 1-141.

Examined and approved, as the official classification and appraisement of

a part of the unsold public free school land in Liberty county, this 2d day of January, 1888.

R. M. HALL, Commissioner.

GENERAL LAND OFFICE, AUSTIN, TEXAS, May 2, 1893.

I, Andrew J. Baker, Commissioner of the General Land Office of the State of Texas, do hereby certify that the foregoing five pages are true and correct copies of the records of this office.

In testimony whereof I hereunto set my hand and cause the [SEAL.] impress of the seal of said office to be affixed the day and date last above written.

ANDREW J. BAKER, Commissioner.

GENERAL LAND OFFICE, AUSTIN, TEXAS, Nov. 1, 1892.

Now comes G. W. Carroll, a resident citizen of Jefferson county, State of Texas, who, upon his oath, states that the classification and appraisement of the timber on public school section 76, certificate 25-1204, H. & T. C. R'y Co., Jasper county, is erroneous in the present valuation of \$6 per acre for the timber only, on account of the timber on adjoining sections being fully as good and appraised at \$3.75 per acre, and that the appraisement was made in error and without proper examination. This affiant has been on this land and has carefully examined the same and would say that the appraisement should be corrected to \$4.50 for the timber only, and this price would be a fair valuation for the timber only. Witness my hand, this 1st day of November, A. D. 1892.

G. W. CARROLL.

Subscribed and sworn to before me, the undersigned authority. [Seal.] Given under my hand and seal of office at Austin, Texas, this the 1st day of November, A. D. 1892.

CHAS. H. POWELL,
Notary Public, Travis County, Texas.

"Corrected Classification, Act 1887."

Sec.	Blk.	Certificate.	Original Grantee.	Watered or Dry.	Agricultural, Grazing, or Timber.	Number of Acres.	Price.
76		25-1204	H. & T. C. R'y Co...	Dry	Timber....	640	*\$5 50

*Timber only, \$4.50.

Remarks.—Corrected on proof hereto attached.

Examined and approved as the corrected classification and appraisement of certain unsold public school land in Jasper county, as made in this office November 1, 1892.

W. L. MCGAUGHEY, Commissioner.

County clerk, 11-1-92.

Correction recorded in office of county clerk, 11-3-92.

Notice filed in this office, 11-28-92. J. D. M.

(Copy.)

JASPER, TEXAS, March 6, 1893.

Hon. W. L. McGaughey, Commissioner General Land Office, Austin, Texas:

Dear Sir: Recently I have been at work remarking the H. & T. C. R'y surveys in this county and I enclose you reclassification of certain sections which will be on the market soon. I never saw such destruction of timber as has occurred in this section by worms, fire, etc. It would be a big saving to the school fund were they all closed out. Yours truly,

E. I. KELLIE.

Public Free School Lands, Jasper County.

Sec.	Blk.	Certificate	Original Grantee	Watered or Dry	Agricultural, Grazing or Timber	Number of Acres	Price
50		545	a H. & T. C. R'y....	.....	Timber....	640	(*)
52		546	b ....do.....	.....	Timber....	640	\$2 50

*Timber only, \$2.00.

Remarks.—(a) Timber small and red heart; much of it dead since classified; will not cut more than 2500 feet per acre, and is worth \$2 per acre.

(b) This section has had a hurricane through it, and fully one-half of the timber had died since it was classified; it will not cut now more than 3000 feet per acre; worth \$2.50 per acre.

I, E. I. Kellie, surveyor, Jasper county, do hereby certify that I have recently made a careful estimate of the timber on these sections, and the above is a full and true estimate of their worth for timber alone.

E. I. KELLIE,
County Surveyor, Jasper County.

Jasper, Texas, March 7, 1892.

Public Free School Lands, Jasper County.

Sec.	Blk.	Certificate	Original Grantee	Watered or Dry	Agricultural, Grazing or Timber	Number of Acres	Timber Only
66		829	a H. & T. C. R'y	....	Timber	640	\$2 25
68		830	b .. do	....	Timber	640	.. ....

Remarks.—(a) I find this section to have a great deal of dead timber on it. The whole west side is dead, caused by fire and worms; will not cut now more at a close estimate than 3000 feet of merchantable pine per acre; is worth \$2.25 per acre for timber.

(b) Fully one-third of this section is in Nichols creek bottom and contains no pine; this is also very much destroyed by fire and worms; will not cut more than half as much as when originally classified; it is worth for timber not more than \$2 per acre.

I, E. I. Kellie, county surveyor, Jasper county, do hereby certify that I have recently carefully went all over and resurveyed and classified the above sections, and the above is a true statement as to their value.

E. I. KELLIE,
County Surveyor, Jasper County.

Jasper, Texas, March 7, 1892.

Corrected Classification and Corrected Appraisement (for timber only) Public School Lands, Jasper County.

Sec.	Certificate	Original Grantee	Watered or Dry	Agricultural, Grazing or Timber	Number of Acres	Price	Timber Only
50	545	H. & T. C. Ry.	Watered	Timber	640	\$5 00	\$2 00
52	546	..do	Watered	Timber	640	5 00	2 50
66	829	..do	Watered	Timber	640	5 00	2 25
68	830	..do	Watered	Timber	640	5 00	2 00

Remarks.—Corrected on classification made on careful examination by the county surveyor of Jasper county, and so certified. The same hereto attached.

Examined and approved as the corrected classification and appraisement of certain unsold common school lands in Jasper county, as made in this office, for land and timber March 14, 1893.

W. L. MCGAUGHEY, Commissioner.

Corrected by E. M. Phelps.

County clerk advised March 14, 1893.

Recorded by county clerk March 16, 1893.

JASPER, TEXAS, March 16, 1893.

Commissioner, General Land Office, Austin, Texas:

Dear Sir: I have this day received and entered of record corrected classification and corrected appraisement of the following lands:

Section 50, certificate 545, H. & T. C. R'y Co.

Section 52, certificate 546, H. & T. C. R'y Co.

Section 66, certificate 829, H. & T. C. R'y Co.

Section 68, certificate 830, H. & T. C. R'y Co.

A. J. RIGSBY, Clerk Jasper County.

GENERAL LAND OFFICE, AUSTIN, TEXAS, May 2, 1883.

I, Andrew J. Baker, Commissioner of the General Land Office of the State of Texas, do hereby certify that the foregoing seven pages are true and correct copies of the records of this office.

In testimony whereof I hereunto set my hand and cause the
[Seal.] impress of the seal of said office to be fixed the day and date last
above written. ANDREW J. BAKER, Commissioner.

Public Free School Lands, Jasper County.

Sec.	Blk.	Certificate	Original Grantee	Watered or Dry	Agricultural, Grazing or Timber	Number of Acres	Price	Timber only
50	..	545	H. & T. C. R'y Co	.....	Timber ...	640	\$5 00	\$3 00
52	....	546	do	.....	Timber ...	640	7 00	6 00
66	....	829	do	.....	Timber ...	640	5 00	4 00
68	....	830	do	.....	Timber ...	640	5 00	4 00
76	....	25-1204	do	.....	Timber ...	640	7 00	6 00
86	....	25-1209	do	.....	Timber ...	640	6 50	5 50
92	....	25-1212	do	.....	Timber ...	640	5 00	3 75
118	2	25-1220	do	.....	Timber ...	640	10 00	9 00
120	2	25-1221	do	.....	Timber ...	585	5 00	2 25
52	....	228	T. & N. O. R'y Co	.....	Timber ...	640	5 00	3 00
122	2	25-1222	H. & T. C. R'y Co	.....	Timber ...	640	8 50	7 50

[This list marked Mc, enclosed in circle, at bottom of list.]

Examined and approved as the official classification and appraisalment of a part of the unsold public free school lands in Jasper county, this 16th January, 1888.

R. M. HALL, Commissioner.

[In pencil] Copy to A. J. Rigsby, county clerk, Jasper, Texas, January 16, 1888. General instructions.

Filed by clerk, January 20, 1888.

GENERAL LAND OFFICE, AUSTIN, TEXAS, May 2, 1893.

I, Andrew J. Baker, Commissioner of the General Land Office of the State of Texas, do hereby certify that the foregoing page is a true and correct copy of the records of this office.

In testimony whereof, I hereunto set my hand and cause the
[Seal.] impress of the seal of said office to be affixed, the day and date last above written.

ANDREW J. BAKER, Commissioner.

Public School (Timbered) Land, Jasper County.

Sec.	Blk.	Certificate	Original Grantee	Watered or Dry	Agricultural, Grazing or Timber	Number of Acres	Price
118	2	25-1220	H. & T. C. R'y Co.	.....	Timber ...	640	*\$6 00

*Timber only \$4.00.

I, E. I. Kellie, county surveyor of Jasper county, do certify that I have recently examined the above section and find it is not worth more than \$4 per acre for timber only, a hurricane having destroyed a large portion of the south half.

E. I. KELLIE.

Austin, January 23, 1893.

*"Corrected Classification, Act of 1887"—Public School (Timbered) Land,
Jasper County.*

Sec.	Blk.	Certificate	Original Grantee	Watered or Dry	Agricultural, Grazing or Timber	Number of Acres	Price
118	2	25-1220	H. & T. C. R'y. Co.	Dry.....	Timber ...	640	*\$6 00

* Timber only \$4.00 per acre.

This correction is now made on certificate of ex-State Classifier, E. I. Kellie, and attached hereto.

Examined and approved as the corrected classification and appraisement of certain unsold public school (timbered) land in Jasper county, as made in this office January 23, 1893, and corrected.

W. L. MCGAUGHEY,

County clerk, 1-23-93.

Recorded by county clerk, 1-25-93.

JASPER, TEXAS, May 2, 1892.

Hon. W. L. McGaughey, Commissioner General Land Office, Austin, Texas :

DEAR SIR: The Texas Tram and Lumber Co. got me to go and look over the H. & T. C. school section No. 122, certificate 25-1222, believing that there was some mistake about its classification. I went around the lines, and over every portion of it, and I find it not as good; that is, it will not cut as much as other sections that were sold to them at from \$3.50 to \$5 per acre for the timber. They claim it is held by the Land Office at \$8.50 per acre for the timber, and that there is not that much timber on it. They are right. It will not cut more than 7000 feet per acre. They are willing to give all it is worth—\$5.25 per acre for the timber. They are getting it cheaper than this from private parties, but this section is right on their road, and if they go by it the State can never sell it, it being so far from any road or stream. I think you would do well to take that price, as there is evidently some mistake in classifying it. I am, please understand, disinterested in any way, and they only got me as county surveyor to look at it. Would be pleased to hear from you on the subject.

Yours respectfully,

E. I. KELLIE,
County Surveyor, Jasper County.

*"Corrected Classification and Appraisment"—Public School Lands, Jasper
County.*

Sec.	Blk.	Certificate	Original Grantee.	Watered or Dry.	Agricultural, Grazing or Timber	Number of Acres.	Price.
122		25-1222	H. & T. C. Ry.....	Dry.....	Timber ...	640	* \$7 25

* Price timber only, \$5 25.

Corrected on letter of county surveyor, May 2, 1892. Letter filed May 6, 1892.

Examined and approved as the official corrected classification and appraisement of certain unsold public school land in Jasper county, as made in this office May 6, 1892.

WM. BRAMLETTE,
Chief Clerk and Acting Commissioner.

Corrected by E. M. Phelps.

County clerk advised May 6, 1892.

(This exhibit marked O. K.)

GENERAL LAND OFFICE, AUSTIN, TEXAS, May 1, 1893.

I, Andrew J. Baker, Commissioner of the General Land Office of the State of Texas, do hereby certify that the foregoing four pages are true and correct copies of the records of this office.

[Seal.] In testimony whereof I hereunto set my hand and cause the impress of the seal of said office to be affixed, the day and date last above written.

ANDREW J. BAKER, Commissioner.

Public Free School Lands, Newton County.

Sec.	Bl'k	Certificate	Original Grantee	Watered or Dry	Agricultural, Grazing or Timber	Number of Acres	Price
42		25-1306	H. & T. C. R'y Co...	.....	Timber ...	640	.....

Valued for timber only, \$3.

Remarks.—I find this section to contain about three-fourths pine. A bay gall in S. E. corner contains about 100 acres that have no pine. "Stump" branch runs through N. E. corner and cuts out fifty acres more. Balance of land good pine. To estimate it all over it will cut 4000 feet per acre. I consider this a good average.

I, E. I. Kellie, do hereby certify that I have given the above section a careful and complete survey, and to the best of my belief do certify that the above is a true and correct estimate as to its value and the amount of timber it will cut.

E. I. KELLIE.

Jasper, Texas, December 27, 1892.

Original Classification Act 1887—Public School Lands, Newton County.

Sec.	Bl'k.	Certificate	Original Grantee	Watered or Dry	Agricultural, Grazing or Timber	Number of Acres	L. and T Price
42		25-1306	H. & T. C. R'y Co..	Watered..	Timber....	640	*\$6 00

*Timber only, \$3 per acre.

(This certificate marked O K in red ink, enclosed in circle.)

Remarks.—See attached classification from E. I. Kellie. See attached sketch for location.

Examined and approved as the classification and appraisement of certain unsold public school timbered land in Newton county, as made in this office, January 3, 1893, under act 1887 and acts amendatory thereof.

W. L. MCGAUGHEY, Commissioner.

Classified by E. M. Phelps.

County Clerk, January 3, 1893.

GENERAL LAND OFFICE AUSTIN, TEXAS, May 1, 1893.

I, Andrew J. Baker, Commissioner of the General Land Office of the State of Texas, do hereby certify that the foregoing two pages are true and correct copies of the records of this office.

In testimony whereof I hereunto set my hand and cause the [Seal.] impress of the seal of said office to be affixed, the day and date last above written.

ANDREW J. BAKER, Commissioner.

Public Free School Lands, Newton County.

Sec.	Certificate	Original Grantee	Watered or Dry	Agricultural, Grazing or Timber	Number of Acres	L. and T Price	Timber only
10	905	H. & T. C. R'y...	Watered..	Timber ...	640	\$7 35	\$6 35
12	911	H. & T. C. R'y...	Watered..	Timber ...	640	7 00	6 00
36	25-1303	H. & T. C. R'y*..	Watered..	Timber ...	640	7 75	6 75

*Slightly in conflict.

Examined and approved as the official classification and appraisement of a part of the unsold public free school land in Newton county, this 29th April, 1890.

[Signed]

R. M. HALL, Commissioner.

GENERAL LAND OFFICE, AUSTIN, TEXAS, May 2, 1893.

I, Andrew J. Baker, Commissioner of the General Land Office of the State

of Texas, do hereby certify that the foregoing page is a true and correct copy of the records of this office.

In testimony whereof I hereunto set my hand and cause the
[Seal.] impress of the seal of said office to be affixed, the day and date last above written.

ANDREW J. BAKER, Commissioner.

JASPER, TEXAS, Dec. 27, 1892.

Hon. W. L. McGaughey, Commissioner General Land Office, Austin, Texas:

Dear Sir—At the request of the Cow Creek Tram people, I herewith send you classifications of Houston and Texas Central Railroad Company section 42, certificate 25-1306, Newton county.

I also, while down there, at their request, went over No. 36, same company, and find since it was classified there has a great deal of timber died on it. It will not cut now over 5000 feet of merchantable timber per acre, and should be reduced to \$3.75 per acre, which I consider a good price now.

I am very truly your friend,

E. I. KELLIE.

Corrected Classification Act of 1887—Public School Land, Newton County.

Sec.	Bl'k.	Certificate	Original Grantee	Watered or Dry	Agricultural, Grazing or Timber	Number of Acres	L. and T. Price
36		25-1303	H. & T. C. R'y Co..	Watered..	Timber...	640	*\$6 75

*Timber only \$3.75.

Remarks.—Appraisement furnished by E. I. Kellie, ex-State classifier, attached hereto.

Examined and approved as the corrected classification and appraisement of certain unsold timbered school land in Newton county, as made in this office, January 3, 1893.

W. L. MCGAUGHEY, Commissioner.

Corrected by E. M. Phelps.

County clerk, January 3, 1893.

Recorded by county clerk, January 9, 1893.

JASPER, TEXAS, Nov. 24, 1892.

To Hon. W. L. McGaughey, Commissioner Land Office:

Dear Sir:—At the request of the Cow Creek Tram Co., I this week have been over section 10, certificate 905, H. & T. C. R. R. survey, in Newton county, which is priced for timber only, \$6.35. I find it altogether too high. I have carefully estimated it and compared it with price of private sales being made in said county, and would say that \$4.50 per acre for said section is all it is worth for timber.

I also estimated section 12, certificate 911, H. & T. C. R. R. survey, which is priced at \$6 for timber, and would recommend that it be reduced to \$4.25 for timber. It is every cent the timber is worth, and the timber is dying out, and will get less in value. I find these gentlemen are willing to pay all the timber is worth, and can certify that they are purchasing from private persons at a much less figure. I feel confident that it will be to the interest of the State to make the above reduction.

Very truly,

E. I. KELLIE.

[If this man Kellie classified these, and now claims that they are worth only the price estimated in letter, we can reclassify and sell at those prices. Com.]

"Corrected Classification"—Public School Lands, Newton County.

Sec.	Blk.	Certificate.	Original Grantee.	Watered or Dry.	Agricultural, Grazing or Timber.	Number of Acres.	L. & T. Price.	Timber only.
10	...	905	H. & T. C. Ry. Co	Wat'd	Timber...	640	\$7 50	\$4 50
12		911	H. & T. C. Ry. Co	Wat'd	Timber...	640	7 25	4 25

The above described corrections are made on letter of E. I. Kellie, Esq., classifier of those lands, and said letter is attached hereto.

Examined and approved as the corrected classification and appraisement of certain unsold public school lands (timbered) in Newton county, as made in this office Nov. 28, 1892.

Corrected by E. W. Phelps.
County clerk, 11-28-92.

W. L. McGAUGHEY,
Commissioner.

Correction made by clerk, and reported Dec. 1, 1892.

GENERAL LAND OFFICE, AUSTIN, TEXAS, May 1, 1893.

I, Andrew J. Baker, Commissioner of the General Land Office of the State of Texas, hereby certify that the foregoing eight pages are true and correct copies of the records of this office.

In testimony whereof I hereunto set my hand and cause the
[Seal.] impress of the seal of said office to be affixed the day and date
last above written.

ANDREW J. BAKER,
Commissioner.

Public Free School Lands, Jasper County.

Sec.	Blk.	Certificate.	Original Grantee.	Watered or Dry.	Agricultural, Grazing or Timber.	Number of Acres.	Price.
76		25-1204	aH. & T. C. Ry. Co.	.....	Timber ...	640	. . .
50		545	bH. & T. C. Ry. Co.	.....	Timber ...	640	.....
52		546	cH. & T. C. Ry. Co.	.....	Timber ...	640	.....

(a) Land and timber, \$7; timber \$6. (Written in pencil.)

This survey is all pine, but in some places recently died out; will cut for floating about 5 1-2 thousand per acre, or about 8000 per acre for local mill. Worth about \$4 per acre.

(b) Written in pencil under section 50—land and timber \$5; timber \$3.

About one-half in swamp, balance good pine. Will average about 3000 per acre for floating, or about 4000 per acre for local mill. Timber on survey worth about \$2 per acre.

(c) In pencil under section 52—land and timber \$7; timber \$6.

All pine and of good quality. Will cut for floating about 6000 per acre, or about 800 for local mill. Timber on said survey worth about \$4 per acre.

Public Free School Lands, Jasper County.

Sec.	Blk.	Certificate.	Original Grantee.	Watered or Dry.	Agricultural, Grazing or Timber.	Number of Acres.	Price.
68		830	aH. & T. C. Ry. Co.	.....	Timber ...	640	.....
66	...	829	bH. & T. C. Ry. Co.	.....	.....	640	.....

(In pencil, under section 68—land and timber, \$5; timber \$4.)

(a) About 130 acres of good pine on south side of creek, and about 350 acres of medium pine on north side of creek; balance in creek swamp. Will average about 4000 per acre for floating, or about 5500 for mill. Timber on survey worth about \$3 per acre.

(In pencil, under section 66—land and timber \$5; timber \$4.)

(b) In this survey I find about 150 acres that the timber has recently died out; balance fair pine. Survey will average about 4000 per acre for floating, or about 5500 per acre for mill timber. Worth about \$2.50 per acre.

GENERAL LAND OFFICE, AUSTIN, TEXAS, May 2, 1893.

I, Andrew J. Baker, Commissioner of the General Land Office of the State

of Texas, do hereby certify that according to the records of this office the foregoing are true and correct copies of the original classification of sections 76, 50, 52, 68 and 66, as surveyed by the H. & T. C. Ry. Co. in Jasper county.

In testimony whereof I hereunto set my hand and cause the [Seal.] impress of the seal of said office to be affixed, the day and date last above written.

ANDREW J. BAKER,
Commissioner.

Public Free School Lands, Newton County.

Sec.	Blk.	Certificate.	Original Grantee.	Watered or Dry.	Agricultural, Grazing or Timber.	Number of Acres.	Price.
36	..	25-1303	H. & T. C. Ry. Co...	Watered	Timber...	*640	... ..

* Doubtful.

(In red ink, under this exhibit, is written—land and timber \$7.75; timber \$6.75.)

(Written in pencil—appears slightly in conflict.)

The timber on this section is excellent; in fact, as good as there is in this section of country. It will cut 9000 feet per acre of first class merchantable lumber; worth \$5.50 per acre for its timber. The soil is sandy, with a splendid yellow clay subsoil, and produces with little fertilizing the finest kind of cotton, corn and sugar cane.

Nichols creek does not run through this section, as shown on map, but is watered by a branch of same.

Public Free School Lands, Newton County.

Sec.	Blk.	Certificate	Original Grantee	Watered or Dry	Agricultural, Grazing or Timber	Number of Acres	Price
10		905	a H. & T. C. R'y Co.	Water	Timber ...	640	.....
12	...	911	b H. & T. C. R'y Co.	Water	Timber ...	640	.....

(Written in red ink under section 10: L. and T., \$7.35; T., \$6.35.)

(Written in red ink under section 12: L. and T., \$7; T., \$6.)

Remarks.—(a) This is also a splendid section of land; all solid pine without a break; will cut 8500 feet per acre and is worth \$5 for its timber. The soil is rolling and would produce good crops if fertilized. The section is watered by spring branches.

(b) This section is an average good pine land, being solid pine all over; it is large and good and will cut 8000 feet of first-class merchantable timber; worth for its timber, \$5 per acre. The land is slightly rolling, and, like all pine lands in this section, has a good clay foundation or subsoil, and with a little fertilizing produces wonderfully.

GENERAL LAND OFFICE, AUSTIN TEXAS, May 2, 1893.

I, Andrew J. Baker Commissioner of the General Land Office of the State of Texas, do hereby certify that the foregoing three pages are true and correct copies of the original classification and valuation of sec. 36, cert. 25-1303, sec. 10, cert. 905, and sec. 12, cert. 911, as surveyed by the Houston and Texas Central Railway Company in Newton county, now on file in this office.

In testimony whereof I hereunto set my hand and cause the [Seal.] impress of the seal of said office to be affixed, the day and date last above written.

ANDREW J. BAKER, Commissioner.

(Copy.)

JASPER, TEXAS, Oct. 15, 1892.

Hon. W. L. McGaughey, Commissioner General Land Office:

Dear Sir: Yours of the 11th instant received in regard to classifying G. C. & S. F. sec. 2, block P, cert. 5443, 412 acres, in Newton county. I have written to G. W. Smyth notifying him you have authorized me to classify same and that I will do so as soon as I hear from him.

I appreciate your kindness and will reciprocate same. Yours truly,

E. I. KELLIE.

Will send full statement as soon as I get through.

Public Free School Lands, Newton County.

Sec.	Blk.	Certificate	Original Grantee	Watered or Dry	Agricultural, Grazing or Timber	Number of Acres	Price
2	P	5443	G. C. & S. F. R'y Co.	.....	Timber ...	412	\$3 25

Remark.—Timber short. There is a marsh of about 20 acres on it which contains no timber, also about 30 acres of timber all dead—killed by worms. On south and east ends the timber is small and sappy; carefully estimating and making an average of it all over, it will cut 3500 feet of merchantable timber; it is worth \$3.25 per acre for timber.

(This certificate is marked O. K.)

County clerk, 11-1-92.

I, E. I. Kellie, timber classifier, do hereby certify that I have carefully surveyed and estimated the above section of school land, and to the best of ability, that the above is a true and correct statement of its value and what it will cut.

E. I. KELLIE.

Examined and approved November 1, 1892.

W. L. MCGAUGHEY, Commissioner.

GENERAL LAND OFFICE, AUSTIN, TEXAS, May 2, 1893.

I, Andrew J. Baker, Commissioner of the General Land Office of the State of Texas, do hereby certify that the foregoing two pages are true and correct copies of the records of this office.

In testimony whereof I hereunto set my hand and cause the [Seal.] impress of the seal of said office to be affixed the day and date last above written.

ANDREW J. BAKER, Commissioner.

Public Free School Lands, Newton County.

Sec.	Blk.	Certificate	Original Grantee	Watered or Dry	Agricultural, Grazing or Timber	Number of Acres	Price
2	P	5443	G. C. & S. F. R'y Co.	Watered..	Timber ...	404	.....

(This certificate is marked in lead pencil: Vacancy doubtful. Groos.)

This can not possibly be where the field-notes call for it. It claims to run down between the county line and Nos. 17 and 19, H. & T. C., when the fact is Nos. 17 and 19 reach the county line and have established corners on it. These are both too large by from 80 to 100 acres, but the lines and corners are there. However, it is good pine and will cut 6000 feet per acre, worth, when railroad reaches it, \$1 per thousand.

GENERAL LAND OFFICE, AUSTIN, TEXAS, May 2, 1893.

I, Andrew J. Baker, Commissioner of the General Land Office of the State of Texas, do hereby certify that the foregoing page is a true and correct copy of the original classification of sec. 2, block P, cert. 5443, as surveyed by the G. C. & S. F. R'y Co. and classified by E. I. KELLIE, State agent, and that the same is now on file in this office.

In testimony whereof I hereunto set my hand and cause the [Seal.] impress of the seal of said office, to be affixed, the day and date last above written.
ANDREW J. BAKER, Commissioner.

W. L. McGaughey, being sworn, testified as follows:

TESTIMONY OF W. L. M'GAUGHEY.

Q. Colonel McGaughey, I will ask you where you live?

A. Here in Austin.

Q. I will ask you if you are acquainted with W. W. Williams?

A. Yes, sir.

Q. How long have you known him?

A. I suppose fourteen or fifteen months. I could not say exactly.

Q. What business is he engaged in?

A. I think he is a lawyer sir. I don't know; I heard so.

Q. I will ask you if Mr. Williams was engaged in copying the records or any portion of them during last year or any part of it?

A. Yes, sir. I don't remember the period exactly. The records in the office show when the work was finished.

Q. What was he engaged in doing?

A. He was copying the field notes of Hall county.

Q. For what purpose did he want to get them?

A. It was a new county. I suppose he wanted to copy them for the pay that was in it.

Q. For what purpose was the record used?

A. Each county surveyor is required to be furnished with a copy of the record and original field notes of his county and an official map of the county before he can go to work as county surveyor.

Q. How long was Williams in copying?

A. I think a month or six weeks. I don't remember exactly.

Q. Was any permission given him during that time to stay in the office after office hours?

A. Yes.

Q. How long did he stay in the office after office hours?

A. I left him in charge of the office. He was under oath. I qualified him. I left him there and told the watchman to let him stay.

Q. Where is the watchman's department?

A. In the lower story. The second room on the front.

Q. Where are the file records?

A. Right above in the second story.

Q. Did you give him permission to go in the file room?

A. No. He could not have gotten in.

Q. Something has been said about Mr. Schmitz who was copying some lease contracts, what were they for?

A. Mr. Doroughty represented by letter and in person to me that he had control and owned a great deal of individual and State sections in the State, and especially in the northwest, and he told me if he had a record of the leases he would force parties to lease from the State and pay the State the money, and it was for that purpose that he wanted the copies.

Q. How long was Schmitz permitted to remain there?

A. I did not limit him. I suppose until about supper time. He could not get the lease books during the day.

Q. Why?

A. The clerks were using them.

Q. You let him remain there after office hours until he made the copies?

A. Yes.

Q. What time did he quit there?

A. Along in October. I don't remember the date.

Q. I understood you to say you left him there under the supervision of the watchman.

A. Yes.

Q. I will ask you if any papers were missing?

A. No.

Q. Did he ever disturb any papers of the State?

A. No. I never heard of his doing so.

Q. Nothing in any shape, manner or form was ever disturbed or lost, was there?

A. I think good results followed, for I know of one instance where we leased to Doroughty land that was

used by others and for which Texas got nothing from it. I was working for the best interest of Texas. The records will show the greatest lease record that has ever been in the history of the State.

Q. I will ask you, Colonel, to explain to the court the sale of the timber upon the lands in Jasper and Newton counties—how you came to make the sale of the timber there and how you came to change the original classification.

A. Mr. Kellie and Mr. Copley, surveyors, came to me in my office some time during my incipency there and notified me that there was some reclassification needed in that country, and I engaged them both there that whenever needed to do the work. I paid Copley \$2 per section as long as the money held out. There was \$50,000, and I did not know how long it would hold out, running the office and having to make trips. I made one trip to the Panhandle and took two clerks with me to settle a dispute out there.

Q. Was it upon official classifications made by Kellie that these changes were made?

A. Yes. I appointed them both as my agents when it was necessary.

Q. Who is Mr. Kellie?

A. Surveyor of Jasper county. He is captain of a military company over there. I have known him two years. He has been here to the last two State drills with his company. He told me he knew every section in that county. He told me further that these lands had never been marked upon the ground. I want to explain his letter there. He said these lands had never been surveyed and marked on the ground, and that is what he means by getting pay from this company. It is a matter of record that he has reported to the office where depredations have been made on timber lands and I have collected the money for it. I authorized him to do that also. We collected money for depredations on the land that had been depredated on. He surveyed them all.

Q. They had originally been classified some years before and the timber on them?

A. Yes, as the records show.

Q. The classifications were changed and sales made on the new classifications?

A. Yes.

Q. Do you know the parties that the sales were made to?

A. No. I would not know one of them if I met him in the Senate Chamber this evening.

Q. In making these sales have you had any interest in the matter?

A. No.

Q. Did you ever see those who purchased this timber?

A. No. They might have been in the office.

Q. You had no interest in the matter, except to do the best you could?

A. No.

Q. Did you ever receive any presents from them?

A. Sometimes they left a cigar on my desk, and I don't smoke and I gave it to the next fellow that came along. I acted for Texas' interest, as I have a thousand times, believing that I had as much right to reclassify as my predecessor had to classify. I claim it yet under the law to do it regularly.

Q. How long had that timber been on the market?

A. From the date of the classification. I suppose since 1887.

Q. It has been on the market ever since and was not sold?

A. Yes.

Q. Is any of it still unsold according to the reclassification?

A. Yes.

Q. I will ask you in regard to a certificate which was presented to Judge Bramlette on a map which was presented to Bramlette by your son, it seems, in regard to these lands in Liberty and Harris counties. Did you see that certificate before it was presented?

A. I never saw it in my life; I know nothing about it.

Q. Did you ever present any certificate of that character to Bramlette for his signature?

A. I would not do that. I would not present a false certificate to any man.

Q. I will ask you if that particular certificate was presented by you, or by any one else with your knowledge?

A. No. I never heard of it till it was all over. I knew a request had been made for the map by Mr. Townsend. I expected the map to be fixed properly. We don't require written orders for anything from members of the House and Senate; their verbal order is sufficient. That is a rule of the office.

Q. This certificate. You never saw nor heard anything of it at the time, nor had anything to do with it?

A. No. When my boy presented or brought me the one you have here I did sign it. I would sign another like it.

Q. Where was that map presented to you?

A. In Judge Faulk's office.

Q. How long had you been there?

A. I had spent the evening with him.

Q. Is the map correct?

A. Mr. Pressler told me it was precisely and absolutely correct. He is the draughtsman. He said he made a careful examination, and that it was correct. He is an excellent man, and has been in the Land Office twenty-five years.

Q. That is the certificate to the Liberty county map?

A. Yes.

Q. Explain how you came to put the Harris county lands on the market under section 22 of the acts of 1887?

A. There is a man in the House now by the name of Johnson, who bought as an actual settler in that county. He came in the office in the spring of 1893 emaciated and thin, and told me no man could live on that land, and that it was covered with water, and he wanted me to cancel the sale and sell under section 22. I told him I could do it but he would lose his money; that there was no law for me to cancel his sale and let him get the benefit of his money. He said he could not live on it, that it was covered with water, and if he had his improvements he would not go on it again. He said he did not want to give it up as it was all he had.

Q. How long had these lands in Harris and Liberty counties been on the market under general instructions?

A. They were put on in 1887. If you go back to 1874 you find them at 50 cents per acre, in 1881 at \$1 per acre, and I don't see anybody having bought any.

Q. Did you have other reports from those lands in those counties giving the character and description of the soil and the value of the land?

A. Yes. I began to inquire then after Mr. Johnson had come in, along in the spring of 1892. I examined the classifications. I found no agricultural lands there. Classifications report them under water during all seasons, poor and not fit to live on. I began to inquire, and the more I enquired the less I thought the lands suitable for people to live on, and I thought with the precedent of Medina county and others I would sell them without settlement.

Q. Was that your honest construc-

tion of section 22 of acts of 1887 and 1889?

A. It was at that time. Prior to that I doubted the propriety of selling any land in any county that was not absolutely isolated and detached. After consulting the classification and seeing the land being under water, I thought I had a right to sell them and I think so yet.

Q. In your action did you have any desire to favor any man or section of men?

A. No. I never do that. Personally these men like me. These men don't like me officially. I am tight on them.

Q. In that action was your purpose to follow the law for the best interests of the State as you believed it to be?

A. Yes, that was my motive always. I had no desire to favor anybody. I have favored the actual settler, and sometimes have crowded the law in favoring the actual settler, and all the western country will testify to it.

Q. Something has been said about Mr. Boaz; are you acquainted with him?

A. Yes.

Q. Something has been said about your conversation with Boaz before the Liberty county lands were put on the market. Explain that to the court.

A. I don't know that I can remember the language. Mr. Boaz was a cotton buyer in Fort Worth. I have sold him cotton there. I liked him personally. He was a good jovial fellow. He has got a good deal of gab about him. I asked him about that country. He told me about Harris county. I made it a rule to inquire, after I became interested, about the condition of that country, and examined and found no agricultural land, and that it was unfit to live on. I found, on examination, that every two years we could sell it again. I think two-thirds of the land that has been sold in that country has been forfeited and resold. It goes on every year regularly.

Q. Did you ever directly or remotely conspire with Boaz and DeCordova or any of these gentlemen, so as to favor them?

A. No. I don't conspire with anybody. Never was in a conspiracy in my life except in the Confederate war. That was the only conspiracy I was in. DeCordova don't like me. I had a mandamus suit with him. He had me mandamus. I beat him down there in the mandamus suit.

Q. There was no purpose on your

part to favor him or any one was there?

A. No. I did not know that he had bought till I signed his application. I sign my name so many times a day, I don't read any thing unless a clerk tells me to read it.

Q. Have you had a reliable set of clerks?

A. I thought they were as true as steel. I felt like a father to the whole lot.

Q. Something has been said about Mr. Boaz presenting Mr. Ross with a silk hat?

A. I never heard anything of that matter until after this investigation. That was the first time I had heard of the plug hat. I wear a plug hat myself, but I buy them.

Q. Something has been said about some mining stock presented in the office by Mr. Boaz.

A. I never noticed it. My boy had a slip of it at home. I told him I would burn it. I had advised him to burn it.

Q. What mining stock was it?

A. I don't know; Boaz said he had a mine in Colorado.

Q. Was it regarded of any value?

A. I don't know; John laughed about it when I wanted to burn it.

Q. You knew nothing about it till after it occurred?

A. No. I would not have permitted it if I had known it. He said they sold it by the pound, the paper for wrapping paper. I remarked that I would not give a bee course in Arkansas for the whole business. It fretted me. I did not like it.

Q. Something has been said about some lands bought by Mr. Swartz in Wharton county. Explain what you know about it.

A. I don't personally know where those lands lie unless some one calls my attention to it. I take an application and it does not tell me where the land lies; it only tells me the county. The party's name is on the application.

Q. Were you acquainted with Mr. Swartz?

A. I saw him to-day. I did not know him yesterday. He came up and shook hands with me. I did not know him yesterday. I would know him to-day.

Q. I will ask you if you recollect anything of a conversation between yourself and Baylor and Roach in regard to these sales in Liberty and Harris counties?

A. Yes.

Q. When did you first talk to them about it?

A. We had a conversation one Sunday morning.

Q. When was that; after the Legislature met?

A. I don't remember. I think it was after the land sales.

Q. I will ask you to refresh your mind on that, if something was not said about an investigation?

A. Yes, and I told them I courted an investigation and that I had done nothing that I was ashamed of.

Q. I will ask you in these sales to Swartz and Duffield if you knew of those land sales till after they were made, and if your attention was called to the fact that they were related to clerks in your office?

A. Mr. Harris asked me if it was wrong or right for his father-in-law to buy school land. I told him I did not know of any law to keep a man's relatives from buying school land. I did not know of Mr. Duffield having bought. I told him I knew of no law to prevent his relatives from buying land if they wanted to, and I don't. He said he would not have anything to do with it himself.

Q. Were the applications regularly filed?

A. I did not see the applications. I suppose so.

Q. The sales were made?

A. Yes.

Q. Did the applications go into the office properly?

A. Yes. I remarked that Senator Imboden had a brother-in-law in the office, and I cited that as an illustration and said I did not think Mr. McHenry should keep Senator Imboden from buying a piece of land.

Q. Did you in any manner, form or fashion favor these gentlemen more than any other persons?

A. No. I did not know what sections they applied for. I never favor anyone except actual settlers. I do favor them.

CROSS-EXAMINATION.

Q. You say you instructed the night watchman to permit Schmitz and Williams to stay in the Land Office after office hours?

A. Yes.

Q. Did you detail any clerk to remain with them?

A. No. I did not think it necessary. I am under \$50,000 bond for my conduct.

Q. Do you think your bond is good for any acts of yours?

A. I think my bond is responsible for any act of mine.

Q. Do you think you have a right to make an unlawful rule with respect to your office?

A. I don't think I would like to make an unlawful rule.

Q. Is it your practice to permit people to go there after office hours?

A. No—only in rare cases.

Q. The records, except those kept in the file room proper, were accessible to parties remaining in the office, were they not?

A. The leases were accessible to Schmitz because he was authorized to handle them. He had the classification books, but our desks are mostly locked and I have asked for an appropriation so every clerk can have a locked desk, as I have not all of them supplied.

Q. You have not got that appropriation yet, have you?

A. No.

Q. All of the office except the file room proper was open to these parties, was it not?

A. They were not authorized to go upstairs. They were upon honor, and I took them to be honorable gentlemen.

Q. You had been acquainted with them only a short time, had you not?

A. No, I knew Williams a short time. Mr. Doroughty was a friend of mine, and I had a letter from Doroughty which vouched for Schmitz.

Q. Was that the first you had seen of Schmitz?

A. Yes, he was only there a few days and went to the Comptroller's office.

Q. The work Williams was doing was office work, was it not?

A. No; the county has a right to send a deputy to get their records or I have a right to make them.

Q. Who got the pay for the work?

A. The State got the part she labored for. Time of a clerk for comparing, \$5.00 a day.

Q. Did you hear Mr. Williams' testimony awhile ago on that point?

A. Yes. The State got her part for comparing.

Q. Did the State get fees for that?

A. It always does.

Q. Did it get fees for the Schmidt work?

A. No. There are no fees in that.

Q. Does not the law provide for a charge for examination of your books or the books of your office?

A. In some instances the public have a right to go to those records. They have a right to sit there and copy

them. We often give it to them free. It is a common thing in the office.

Q. You say that in regard to the reclassification of the timber on the lands in Jasper county, that you shortly after your induction into the office met Kellie and Copley?

A. Yes.

Q. That you asked these gentlemen to act as agents for you?

A. I don't know if I asked them or they asked me. I think they asked me. I knew they wanted to be employed. I employed them. I did not pay Kellie anything. We were out of money.

Q. Is it not a fact that in making the reclassification you acted on the information given you by Kellie, that it was not under oath, and that his services were paid for by the company that bought the timber?

A. What is the question?

Q. I asked you if you did not reclassify and revalue those lands on the statement of Kellie not under oath made at a time when you knew that he was employed by parties seeking the reclassification?

A. He was employed to survey, not reclassify. He came to see me before he made the resurvey and revaluation.

Q. You say he made a verbal statement different from his letter?

A. Yes. I know what his letter is. You need not read it unless you want to.

Q. You say you had a verbal conversation with him?

A. Yes, I had several.

Q. When?

A. He was in the office during the drill of the last two years.

Q. Were you two years having this revaluation made?

A. It took only a little while. He represented to me that worms and fire had destroyed the timber and it would not sell, and he wanted to be employed as classifier to reclassify them so that they would sell.

Q. Then he wrote you that these parties were paying him \$5.00 per day for classifying?

A. He notified me that the country was a map survey, and that trespassers had gotten on one section or another because the lines were not run out.

Q. Have you any other letters from him?

A. I don't remember if I have any other letters from him.

Q. You did not seek other information except from Kellie?

A. I thought that was sufficient.

Q. You don't recollect what reductions you were making in the school lands do you? You personally made those reductions?

A. No; the reductions were made under my directions. All I wanted was a statement from Kellie.

Q. You made no inquiry of any one else, either as to the desirability of those lands, or new mills needing timber?

A. I made inquiry where tramways left a section and it was not sold at all. That was urged as a reason why they should be classified.

Q. You sold them on the same day they were reclassified, did you not?

A. Yes.

Q. You sold them to the same persons who wanted them reclassified, did you?

A. Yes.

Q. You notified the county clerk on the day you sold them, did you?

A. Yes; it is a matter of record what the notification is. The notification was sent out the day they were sold. I do not remember the notices as to whether and how we gave them.

Q. Did you give any opportunity for competition among persons who wanted those lands? Did you give any opportunity for competition in the sale of those lands?

A. I did not have it to do. I did not. I did not think it necessary.

Q. Why did you think it necessary to give the county clerk notice that you had reduced the value?

A. It was a rule of the office, and he could fix his books to agree with those in the Land Office.

Q. Do you know who those lumbermen are you sold to?

A. I don't know if they are a corporation. They wanted to buy the land but I would not sell it to them.

Q. With regard to the lands that you sold in Liberty and Harris counties, as with respect to Harris county lands, you say your uniform practice had been not to sell blocks of sections such as in Harris and Liberty counties?

A. I had never thought about it much until this question came up, and I think I had decided that they would not be sold.

Q. Had you not given instructions to that effect?

A. I think so.

Q. Had not applications for the purchase of these lands under section 22 been rejected?

A. I think so; there is a man in the house here whose application I rejected.

Q. You put them on the market when Boaz was here, did you not?

A. Yes; he had nothing to do with it.

Q. Did you not ask him if he wanted some of those lands?

A. I may have.

Q. Did he not say yes, that he had the application in his pocket, and did you not say alright?

A. I may have.

Q. Is it not true that you did not know any of these lands had been sold until this trouble came up?

A. No; that is too thin; I put them on the market.

Q. Did you not, in the presence of two of your clerks, state that you did not know that they were on the market; in the presence of Baylor?

A. I said if I knew my clerks were dabbling in them, I would have turned them out and cancelled the sales.

Q. Did you turn them out when you learned of it?

A. No. I said if I had known my clerks were dabbling in the lands, I would have turned them out and cancelled the sales.

Q. You say that you did not make a statement that you did not know the Liberty county lands had been sold till three weeks after?

A. I don't remember saying it.

Q. Did not your son tell you you should not put them on the market?

A. Yes.

Q. Did not your legal adviser tell you so?

A. I have no legal adviser; I go to Baylor when I want legal advice. He is no legal adviser of mine; he might have told me so.

Q. Did not other of your clerks protest against your putting them on the market?

A. They may have done it; they said more after than before the sales.

Q. The fact of it was, they did not know much about it, before, did they?

A. They might not; I don't consult them.

Q. After your son had told you you had better not put them on the market (He said: "Pa, I would not do that")—I have no law clerk), and he had advised you not to do it, you still went ahead?

A. I don't remember going to them about it; I still went ahead and pursued that course.

Q. The law requires you to consult the Attorney-General, does it not?

A. I don't think so.

Q. Have you ever read that act?

A. Yes; I have read it all.

Q. Do you remember what is said about it?

A. Yes, if I had any doubt.

Q. You were confirmed you were right before, and then you were equally firm that you were right afterwards?

A. I studied the question and considered the lands unfit for settlement.

Q. Did you consider you had a right, merely considering them unfit for settlement, to put them on the market under section 22?

A. I did. Under section 22 I considered that I had a right to sell them.

Q. Did you not state you sold them as detached lands?

A. I did.

Q. Are there not about 128 sections in the Liberty county block, including those in Jefferson and Chambers counties?

A. I think not. I think there are about 19 or 20 sections. I don't recognize this map you show me as being official.

Q. Please count the number of sections that are joined in that county.

A. I don't want to do it.

By relator's counsel: If the court please, we want witness to count those sections.

A. Do you wish me to count them? I will do so with pleasure, sir.

Q. Count only the blue ones.

A. I will have to have pencil and paper and keep a tally sheet.

Respondent's counsel suggests that the map is in evidence and we can agree on an enumeration.

(The question is withdrawn for the present.)

Q. These lands appear to be in one body, do they not?

A. No.

Q. Tell us the difference.

A. I see some individual sections. I see a disconnection here. I see no connection with the others.

Q. What segregates them?

A. I see some surveys in there not marked blue.

Q. Are not those lines the dotted lines of the counties? Is there not an anchor there to show their connection?

A. It shows where two sections are that do not meet.

Q. The application for the purchase by Boaz was made on the 20th of January?

A. Yes.

Q. Your records show you notified the clerk on the 23d, and he received it on that day?

A. Yes.

Q. The record shows that the application of David Boaz was made on the 20th of January and that your notice was received by the clerk on January 23, 1893?

A. Yes.

Court adjourned to to-morrow at 9 a. m.

SENATE CHAMBER,

AUSTIN, TEXAS, May 5, 1893.

The High Court of Impeachment convened pursuant to adjournment.

Lieutenant-Governor Crane presiding.

Quorum present.

(Testimony of Col. W. L. McGaughey, Mr. Henderson, for the prosecution, crossing him.)

Q. On yesterday you stated that the map you certified to was brought to Col. Faulk's office?

A. Yes, sir.

Q. That was the first you had seen of it?

A. Yes, sir.

Q. Who brought it to you?

A. My son John.

Q. Anybody come with him?

A. I think not.

Q. You certified to it at once?

A. I did.

Q. There in Judge Faulk's office?

A. Yes, sir.

Q. After office hours?

A. I don't remember what hour it was.

Q. Is it your custom to give certificates after office hours?

A. That was not official.

Q. That was not official?

A. It was not for official use except by a member of the House.

Q. What was the necessity for the certificate?

A. To show that it was genuine.

Q. You didn't think it was anything of value?

A. No, sir, I didn't.

Q. You had Mr. Pressler draft the map as correct and afterwards certified to it?

A. Yes, sir.

Q. When certified to, you didn't know anything about it?

A. Yes, sir.

Q. Did you know it was correct?

A. I had before examined maps and didn't think there was any public domain there.

Q. You had not examined this map about the blue marks?

A. No, sir.

Q. You had not examined it?

A. I did not look at the map. I don't remember.

Q. You say Mr. Cordova was rather offended at you and didn't come about you much. There was a mandamus suit, and is it not a fact it was dismissed?

A. I don't know.

Q. Did you not agree that if they would dismiss the mandamus suit you would issue the patent?

A. I don't think so.

Q. It was to compel you to issue a patent?

A. Yes, sir.

Q. Didn't you agree to issue the patent if the suit was dismissed?

A. I think not.

Q. You ought to know in a matter of importance like that.

A. I rather think it went to the Supreme Court.

Q. When it got back to the lower court didn't you agree to settle the suit to issue the patent?

A. I think not.

Q. You ought to know.

A. I don't think we have yet.

Q. Did you not agree?

A. I don't know.

Q. Do you know?

A. I don't remember.

Q. I understood you to say you beat him in the mandamus suit?

A. That is my recollection.

Q. Do you know P. M. Cuney?

A. No, sir.

Q. Do you know D. C. Dillon?

A. No, sir.

Q. Where does Dillon live?

A. I do not know.

Q. Did you sell Dillon some lands in Harris county?

A. I think the records show it.

Q. Out of a block of the Houston and Texas Central survey?

A. The records so show.

Q. You had a talk with him about these lands?

A. I had a talk with him.

Q. When was this last conversation?

A. I don't remember.

Q. Didn't you sell some of the lands out of the Houston and Texas Central block in Harris county?

Major Walton: I would not make this objection if it were material to go into this testimony, but I think it is wrong to call on a person for evidence where the records of the Land Office show a fact, and it is not competent to ask a witness for verbal testimony. I insist that where the records show a fact that you go there for it.

Mr. Henderson: We propose to show an official act—a thing done by an official whose conduct is under inquiry, and under necessity the range

of inquiry can not always be restricted in this way.

The Court: What is the question? My attention was called away.

Henderson: I asked him if he didn't sell some of the lands out of the Houston and Texas Central block of Harris county.

The Court: If he does not make the statement, it is a fact that you had best go to the records for.

Q. Do you remember?

A. Only from matter of record.

Q. You didn't put the county on as a county until the 16th of December, did you?

A. I don't remember that.

Q. You notified the county clerk of Harris county as soon as you did put it on, did you not?

A. I don't remember the date, but think it was at once.

Q. Was it the same day?

A. I think so.

Q. Then you put these particular lands on the market at different intervals as purchasers wanted it, did you?

A. I don't remember that. That is a matter of record.

Q. You don't recollect putting the county on the market except at one time?

A. I do not remember.

Q. You had a conversation with Boaz just before you put this county on the market?

A. I had a talk with him, but don't remember the date.

Q. Just before or not? Refresh your memory.

A. I had a talk with him, but don't remember the date.

Q. On the date these particular lands were sold, the 14th of December, didn't you have a conversation with Boaz about these lands?

A. I know that he described the lands to me, but I don't remember the date.

Q. Isn't it a fact he tried to buy them before that date, and you refused to put them on the market before that date?

A. I don't remember.

Q. Didn't he on the 14th of December complain that while he was in Colorado you had sold some of these lands to others, and mentioned Dillon and Cuney?

A. I don't remember that.

Q. Didn't he tell you he thought he ought to have a right to buy some of these lands?

A. I don't remember that conversation.

Q. After describing the lands and

their location as detached lands, didn't you hesitate?

A. I don't remember.

Q. Do you remember whether or not he said it?

A. I do not.

Q. Finally you asked Boaz if he wanted some of the lands?

A. I don't remember that.

Q. You have a pretty good recollection, haven't you?

A. Judge, there are so many things coming up in an office of that size, it is impossible to remember all, and I don't remember dates.

Q. These matters were somewhat impressed on you?

A. I can't remember.

Q. You can't remember whether you asked if he wanted some of them?

A. I don't remember.

Q. He said he had an application in his pocket, didn't he?

A. I don't remember, if he did.

Q. He then went upstairs, and his application was filed that day, the 14th of December?

A. If he did, it is a matter of record.

Q. On that day, the same day, the notice was sent to the Harris county clerk?

A. If that is matter of record, it is so.

Q. You say you don't recollect anything about it?

A. I remember talking with him, but not the conversation.

Q. I understand you to say you did not recollect some conversation with Kelly two years ago?

A. Yes, sir.

Q. This with Boaz you can recollect?

A. I don't recollect.

Q. In the meantime a railroad had been built through these lands?

A. I don't know that.

Q. You found it out soon?

A. I don't know that it runs there now.

Q. You have found out?

A. I have learned that the railroad has been built, but not where it runs.

Q. Did it not go pretty close to them?

A. I learned that yesterday.

Q. Isn't it a matter of fact that there was nothing to keep you from learning that last December?

A. I don't know that I kept up with these surveys.

A. Anyone keep you from knowing where it run?

A. I didn't ask.

Q. When all these gentlemen came up to buy land, didn't it kind of strike you they were coming into value?

A. I can't tell—I don't know.

Q. Did you try to find out?

A. I recollect about a boom in 1890.

Q. This was in 1892.

A. A similar boom in 1890 fell through.

Q. You say Mr. Johnson came up looking very much emaciated and wanted you to let him cancel as an actual settler and buy in 1892 without actual settlement?

A. Yes, sir.

Q. You refused to?

A. I agreed to if he would release the money he had paid in for it and purchase under section 22?

Q. Section 22 has great advantages, hasn't it?

A. Under one he lives on it, under the other he does not.

Q. The law requires him to live on it and make improvements?

A. That is the law on it.

Q. The other doesn't require anything of the sort?

A. It does not.

Q. One he can transfer and the other he can not?

A. He can transfer either.

Q. The same right of transfer is granted under each, but the right of actual settlement does not become fixed until three years.

A. He can sell at any time.

Q. But it does not become a vested right until three years?

A. He can't get title.

Q. So it would have been very much to Mr. Johnson's advantage to have gotten it under section 22?

A. Well, I don't know. It wasn't long before he did prove up.

Q. It wasn't long before he did prove up?

A. No, sir.

Q. You say in these sections of land in the three counties of Liberty, Jefferson and Chambers, that there is a little hiatus or slip of land indicated by an anchor, that indicates the sections do not touch or close?

A. That is it.

Q. That would leave a little vacant land?

A. I don't know; the surveyor was mistaken in the distance from the beginning point and did not close.

Q. The survey joins one, does it, or is that a fact?

A. Well, that is a question of law.

Q. But it must be decided one way or the other?

A. I believe the courts have decided it, Judge.

Q. It don't hardly take a court to decide that question. The surveys join or they do not.

A. They have decided that where questions are raised the courts will pass on the questions.

Q. I am not asking you a legal question. Is it not a fact these surveys on either side of that strip of land join or touch, or they do not?

A. They belong to one of the parties.

Q. If they joined wouldn't the strip be considered attached?

A. I don't know upon what grounds.

Q. If they did?

A. I don't know about that; one of the draftsmen could tell you.

Q. If the surveyor found it joined when made upon the grounds there is a vacant strip of land isn't there?

A. Not always.

Q. That is the rule isn't it?

A. There as a rule is not, but I can tell if there is a vacant strip of land from investigation.

Q. That isn't the question. If they didn't join, the vacant strip is still public land, isn't it?

A. I don't know.

Q. And would be classed under unappropriated public domain?

A. I don't know.

Q. Where there is, it is public domain?

A. I could answer that with a map.

Q. The questions I ask you don't require a map, because they are hypothetical questions. With respect to these lands in Harris and Liberty counties, under what clause or under what particular construction of section 22 did you put these lands on the market?

A. I don't quite understand you as to clause

Q. As to what character of lands?

A. As unfit for settlement.

Q. Unfit for settlement?

A. Yes, sir.

Q. You put them on the market, as I understand you, for general sale, you classed them as not fit for settlement and detached under section 22?

A. Yes, sir.

Q. I want to get your several reasons, as not being fit for settlement and as being detached from what?

A. From other public lands.

Q. What do you mean by public lands?

A. I would mean other unappropriated lands.

Q. If the statute had meant unappropriated public lands, why do you think it would have used the words other public lands?

Major Walton: If the Court please, I don't think the line of investigation now comes under any head. He

wants to know the intention of the Legislature.

Court: The witness could hardly tell the intention of the Legislature, for that is sometimes hard for them to do. (The question is ruled out.)

Q. You stated that your construction was under section 22, and you put these lands on sale because you had a right to sell them as detached lands, as they were detached from any other unappropriated public domain?

A. I didn't say domain.

Q. Just please state what you said?

A. I said lands.

Q. You just stated several constructions: First, as unfit for settlement; second, detached from other unappropriated lands. Then there are two classes, the first being unfit for settlement and the other being detached unappropriated lands?

A. Yes, sir.

Q. Does the statute use the words, other unappropriated lands?

A. Other public lands, and means school lands, asylum and other public lands.

Q. Just uses the words "other public land?"

A. I think so.

Q. Unappropriated is used isn't it?

A. I think not; I don't remember.

Q. Do you recollect having a conversation with David Boaz on the 20th of January, before these Liberty county lands were sold?

A. I don't remember the date.

Q. Do you recollect making some sales of these lands to Swartz and Duffield before they were all placed upon the market?

A. I don't remember the Duffield, but do the Swartz sale.

Q. It was made before you put the lands on the market as detached?

A. I don't remember that.

Q. You know of the sale being made?

A. They spoke to me about Swartz.

Q. Didn't, the other day, you say you didn't recollect the conversation with Boaz on the 20th of January?

A. I don't know. I remember I talked with him frequently, but not the date.

Q. Do you remember talking about these Liberty county lands with him on the day you ordered them put on the market for sale?

A. I can't remember the dates. It was unimportant I thought.

Q. Did you not put the lands on the market the same day you talked about it?

A. I don't know that.

Q. Did you tell Boaz you would put them on soon?

A. I do not remember.

Q. You spoke of your practice in dealing fairly in these matters. Do you consider it altogether fair to let Boaz and others know these lands were to be put on the market and sold before other people who live in that locality?

A. We told anybody.

Q. Who did you tell besides those who bought?

A. Anybody who would have asked.

Q. Did you tell any one else?

A. I don't know. It was no secret.

Q. You did tell these people?

A. I think they found it out in the school land department.

Q. Is it your practice to put these lands on the market, before you send the clerk notice, and to let the parties here see the sales list?

A. The list don't show they are going to be put on the market.

Q. Are they on the market before you receive the notice of the clerk's return?

A. They are not sold generally.

Q. Are they on the market before you receive the notice of the clerk's return?

A. I think not.

Q. You ought to know.

A. The records show.

Q. The rules of your office are not written, are they?

A. No, sir.

Q. Just in your own breast?

A. I tell the clerks them.

Q. With respect to that matter then, there is no law requiring you to send notice to the clerks at once, but that you shall send it?

A. Yes, sir.

Q. You understand it means that all parties shall have a fair opportunity to compete for the purchase of the land?

A. We send the notice.

Q. Do you do it merely for the purpose of complying with the law, or do you comply with its meaning and spirit?

A. We comply with the law.

Q. You think it is a compliance with the law if you send out this notice, and before it could have been received by anybody living in that vicinity, to give notice to such individuals as you choose to furnish with notice that the lands are for sale, and let it be sold as soon as that notice is received?

A. The books will show that.

Q. That is not my question.

A. Repeat your question.

Q. You think it is a compliance with the law when you send out a formal notice to the clerk where the lands are situated, and then at once give notice to other parties whom you may select, or not, of the fact that you are going to put it on sale, and they buy it as soon as that information is received?

Major Walton: While we regard this as immaterial and irrelevant, still there has been no such testimony adduced.

The objection is overruled.

Henderson:—The question is: You think it is a formal compliance with the law, when you send out notice to the clerk where the land is situated and then give notice to such parties as you may prefer to favor or not, of the fact that you are going to put this land on sale, and allow them to buy as soon as that information is given and before you have received a return?

A. I see no harm in that.

Q. Do you see any harm in the further fact, that a telegraphic reply is requested by the office from the county clerk of his receipt of the notice, and under that list the lands are awarded to those who may be first with applications?

A. I will answer, I am not compelled by the law to specify any time between the time of putting these lands on the market and the time of sale.

Q. You answer, as I understand it, that you are not compelled by law to specify any days between them?

A. The law does not tell me how long I shall wait.

Q. You acted on a telegram?

A. I don't remember acting on a telegram.

Q. Did you act on a telegram from Harris and Liberty counties in making these sales?

A. I may have done it.

Q. Do you think that afforded a fair competition of applications between those parties who were living in these counties and trusting to your notice, and the parties here, who had the notice?

A. I don't know that I thought of the competition.

Q. Do you think it is a matter worthy of thought?

A. Well, I really don't know; the law don't compel me to do it.

Q. You were then only complying with the terms of the law?

A. I don't know that I could say that; I tried to comply with the law generally.

Q. Did you seek any information as

to the fact that these lands in Liberty county were becoming very valuable?

A. The officers never do that except from the records.

Q. They just blind their eyes to such matters?

A. They are classified and we sell that way.

Q. They had been classified in 1887, hadn't they?

A. There are lands on to-day and nobody wants them classified at the same time.

Q. There are a great many just such?

A. Yes, sir.

Q. Some becoming more populated and valuable?

A. Yes, sir; towns are growing up and the country settling up.

Q. You know the industry of rice raising was being engaged in in that section?

A. I never heard it until after this trial.

Q. You made no inquiry with respect to these lands?

A. I have had the classification.

Q. Made in 1887?

A. Yes, sir.

Q. You know a railroad company owns the alternate sections, or had.

A. I know they had.

Q. Did you inquire to see whether they did, and the value of them?

A. We never do that.

Q. Do you never inquire?

A. Not unless my attention is called to it.

Q. The fact that these gentlemen were rushing there and urging you to put these lands upon the market was sufficient to call your attention to it, was it not?

A. I don't know; they buy under section 22 and forfeit, and I don't pay much attention. It is an option they take.

Q. You allow them forty years time to pay for these lands under section 22, do you?

A. The law does.

Q. Did you sell the land in Chambers and Jefferson counties?

A. What land?

Q. The free school land?

A. I don't remember. If I did it is a matter of record.

Q. As a matter of fact, didn't you refuse to sell these lands?

A. If I did the letters will show it; I believe though I did.

Q. Do you know as a fact you did; and upon the ground they were detached and isolated?

A. I probably did.

Q. Do you know?

A. I think only to parties to settle them.

Q. On the ground that they were not detached and isolated and unfit for settlement?

A. I don't know that I knew the quality.

Q. You knew as much as you did about the Liberty county lands?

A. Maybe not.

Q. You made no inquiry about them?

A. Except as described.

Q. They are a continuation of the Liberty county lands, are they not?

A. I didn't know that they were the same block or continuation.

Q. You didn't put the maps together to see?

A. We rarely compare maps.

Q. There were fifty or sixty sections of these lands?

A. I don't know.

Q. They were rejected under your instructions?

A. Maybe so; but that is a matter of record if they were.

Q. You don't know anything that is of record?

A. I don't remember in that big office, Judge; I don't try to.

Q. Examine this and see if it is not the notice that was sent out and the telegraphic reply of the receipt of the notice.

A. I can't say it was; it looks like it.

Q. It purports to be that, doesn't it?

A. It purports to be.

Q. And filed in your office?

A. If it is a matter of record.

Q. That has your certificate to it?

A. I will read it and see if it is my certificate.

Q. That is the notice and the clerk's receipt, isn't it?

A. It purports to be.

Mr. Henderson: We offer it in evidence, as follows:

HOUSTON, TEX., Dec. 16, 1892.

To W. L. McGaughey, Commissioner General Land Office, Austin, Texas:

Your letter changing all unsold school lands in Harris county from actual settlement to not requiring actual settlement, received and complied with.

C. F. WINKLER,
Clerk County Court, Harris County,
Texas.

GENERAL LAND OFFICE,
AUSTIN, TEX., March 17, 1893.

I, W. L. McGaughey, Commissioner of the General Land Office of the State of Texas, do hereby certify that the foregoing and attached instrument of writing is a true and correct copy of the original telegram from C.

F. Winkler, clerk County Court, Harris county, Texas, now on file in this office.

In testimony whereof, I hereunto sign my name and cause to be affixed the impress of the seal of said office, this day and date first above written.

[L. s.] W. L. McGAUGHEY,
Commissioner.

And the clerk's testimony shows it was received on the 16th.

Q. Didn't you immediately place some Harris county lauds on the market?

A. I don't know.

Q. And they were sold to Boaz and McLain?

A. I don't remember, sir.

Q. Colonel, don't you live in a house belonging to E. R. McLain?

A. I do.

Q. Pay rent?

A. I do.

Q. What rent?

A. I have paid him in all, I think, \$147 in cash; built a barn, cow lot, horse lot and had some fencing done.

Q. How long have you been in the house?

A. I have been in there since November last.

Q. And paid \$140.

A. Paid in improvement to a carpenter.

Q. Isn't it a fact that you paid no rent?

A. I paid in improvements and to a carpenter.

Q. Isn't it a further fact that you had no agreement as to the amount of rent?

A. I don't think we agreed upon the amount per month. He was to let me live there for the work.

Q. What did you agree about the value of the improvements?

A. Put them in at actual cost.

Q. At the time you made the contract to rent was there any agreement as to specific improvements?

A. I was to have a barn and cow pen and horse lot built. I tried to get him to put them there and let me pay him rent, but he said he was not able.

Q. You put them there yourself?

A. I hired it done.

Q. How long were you to live in the house, for building the barn?

A. He said six months, and if it cost more, why longer.

Q. How were you to go about that; you say you had no agreement as to the amount of rent; how were you to determine as to the time and costs?

A. We would agree as to that.

Q. As to what?

A. As to what it cost, and the time.

Maj. Walton: We do not object to any testimony going to the character of the Commissioner, but they have asked as to that, and this don't seem to us to come under any clause, and is illegitimate, and seems to me to be taking a range that is wholly unauthorized, and we think this character of testimony should not be admitted.

Mr. Henderson: It comes under the article which charges collusion.

Maj. Walton: If Mr. McLain is one of them, and that is your purpose, we have no objection. If he is one of the colluders, all right.

The court: Proceed.

Mr. Lightfoot: Is he mentioned in the article?

Mr. Henderson: I think so; I don't think I can be mistaken.

Q. Your occupancy began the 1st of November?

A. I think along about the 1st.

Q. These lands in Harris and Liberty counties have been sold since that time?

A. He first wanted me to move into the house last spring; he said he couldn't get insurance on it.

Q. You didn't go in then?

A. No sir; I was boarding then and didn't want to go to housekeeping; my wife wanted to go to Alabama.

Q. You gave as one of your reasons that the lands were unfit for cultivation.

A. That was one.

Q. That reason is now stated by you for the first time?

A. I think I stated it yesterday.

Q. I mean on this trial is the first occasion on which you stated that as being one reason?

A. I don't remember.

Q. You appeared before the investigating committee?

A. I did.

Q. Isn't it a fact you didn't state it then?

A. You have the testimony; I don't remember.

Q. Isn't it a fact that you said before them that you gave no instructions as to settlement; that you sold them as detached and isolated public lands, and that they were not attached to large bodies of school sections, and went on to illustrate by a clump of oaks, stating they were like a clump of oaks standing on the prairie to themselves?

A. I think I remember that was one of the reasons, and there was something of that kind said. I remember illustrating by a clump of oaks.

Q. Is that the reason?

A. I don't know that it is the sole reason.

Q. Would you like to refresh your memory?

A. I don't know. I am not particular.

Q. Don't you know you mentioned the mot of timber?

A. I remember that.

Q. You mentioned a precedent you had from Commissioner Hall's office on yesterday?

A. Yes, sir.

Q. Isn't it a fact that you began your administration as one of reform, especially against precedents?

A. I don't know; I have a high regard for him.

Q. Isn't it a fact that at the very outset you set aside all former precedents in regard to selling lands of this character?

A. I may have done so, but I don't remember that I had any occasion to do so. I will say this: I have tried to carry out his contracts.

Q. Didn't you testify before that committee as follows: "Where there are a large body of land coming together you would not consider it detached, but would a small one"?

A. Well, say twenty or twenty-five sections coming together, I would not consider was detached and isolated, and would not sell it as such. If it is there, though, I probably said it.

Q. You can see if it is a matter of record?

A. I never reviewed it.

Q. You did say you used the illustration of a clump of trees to show there might be similar sections?

A. I used some of the illustration.

Q. Well, begin and tell us what you did use.

A. I remember the oak tree illustration.

Q. Do I understand you now that you would change your construction and not sell unappropriated public domain?

A. At the present?

Q. Yes.

A. I wouldn't sell any now that was not absolutely alone.

Q. Then you don't construe the law to mean that if there were a hundred sections, say in this county, that they were detached and unappropriated public domain. Would you or not so consider them?

A. I think the Legislature has construed it for me.

Q. I am asking you for your construction.

A. I will answer, I wouldn't sell the land now as I did then.

Q. You didn't sell the land then under that sort of construction?

A. I believed I had a right to.

Q. You didn't sell it under a construction that any number of sections, just so they didn't touch unappropriated public domain were isolated and detached?

A. I don't remember; I sold them because I thought I had a right to do so under the law and under section 22.

Q. That didn't answer my question. Did you sell them because you considered any number of sections, say 100 off to themselves, isolated and detached?

A. I don't think I would sell 100.

Court: Just answer his question.

Q. Did you sell them under a construction that where, say any number of sections were isolated and detached, was where they did not join unappropriated public domain?

A. I don't think I would sell any number. No, sir.

Q. You didn't sell them then under that construction?

A. Partly I did.

Q. How much under that construction?

A. A good many things induced me to make the sales.

Q. Did you sell lands under a construction that where 100 sections were to themselves they were isolated and detached if they didn't touch any other public domain?

A. I wouldn't sell 100.

Q. You say you did not?

A. Not a hundred.

Q. As we understand you here, you put that construction on section 22. Now then you stated, as I understood you, that in acting at that time you were acting under that construction?

A. Not wholly.

Q. What construction did you, in fact, act upon at that time? Was it that the sections were in clumps, as you illustrated?

A. I don't know what you mean by any number of clumps.

Q. Any you may have had in mind.

A. I don't think I thought of any particular number.

Q. Can you tell upon what construction you did act?

A. Under section 22.

Q. What construction of that section with respect to Harris and Liberty county lands?

A. They were detached.

Q. From what?

A. Other public lands.

Q. Other public lands?

A. Partly that.

Q. Partly what else?

A. Their classification.

Q. Does section 22 say anything about being unfit for settlement?

Walton: That is a question of law and the witness should not be required to answer.

Court: The witness will not be required to state the law.

Senator Lewis, through the Court, asked the following questions:

Q. Did you sell any of the Liberty county lands that are now in question before you wrote the letter to the county clerk on January 21, 1893?

A. I don't think I did. It is a matter of record.

Court: The question is, did you or did you not?

A. I don't remember if I did.

Q. What lands and to whom did you sell before you sent the notice to the clerk?

A. I don't think I sold to anybody.

Q. Explain why P. J. Lawless was permitted to purchase some of the sections that were not isolated and detached as early as January 16th, five days before the lands were placed upon the market?

A. I don't know that he did it.

Q. Have you any explanation to make?

A. I didn't know he had.

Q. Did you sell the lands in Liberty and Harris counties under the construction of the law, that twenty or twenty-five sections of land lying in one county would be isolated and detached from the main body of the public domain lying in the panhandle and in El Paso county?

A. I think I illustrated it that way.

Col. McGaughey: I would like to explain the difference between award and application and award. The application is filed in the office weeks before the award is made and the obligation must date when the record of the sale and transfer began. The obligation dates from when the application is filed. There are instances where sales have been made months after the application is filed and they date back to the obligation. It is a man's note and obligation, and we have no right to change a word on it. I think I can find a case where the sale was made four or five months after the application was made.

Q. The award is the sale of the land?

A. That is the date sale, but it dates back to the day of the application.

Q. Is it not a fact the number of the application is given.

A. Yes, sir.

Q. You have got a copy of a blank?

A. That (indicating the following

instrument) is one with an award on the back. The awards are made on the back.

(Copy.)

APPLICATION AND AFFIDAVIT TO
PURCHASE DETACHED LANDS.

AUSTIN, TEXAS, Jan. 20, 1892.

To Hon. W. L. McGaughey, Commissioner General Land Office:

I hereby apply to purchase, under the provisions of section 22 of "An act to provide for the sale of all lands heretofore or hereafter surveyed and set apart for the benefit of the public free schools, the university and the several asylums, and the lease of such lands and of the public lands of the State, and to prevent the free use, occupancy, unlawful enclosure, or unlawful appropriation of such lands, and to prescribe and provide adequate penalties therefor," approved April 1, 1887, and the act amendatory thereof, approved April 8, 1889, the following lands situated in Liberty county, Texas, about 25 miles [give course] southeast from county seat, to-wit: Liberty.

Sec.	Certificate	Grantee	Acres
16	774	H. & T. C. R'y Co. ...	640

agreeing to pay \$2 per acre for the same; and which said land is detached and isolated from other public lands, as is correctly shown by the accompanying sketch.

For the purpose of securing the said land and of complying with the law regulating the sale of the same, I hereby make and subscribe to the following oath, to-wit:

I, David Boaz, do solemnly swear I am buying this said land for my own use and not for any corporation, and that said land is not occupied by anyone; that my postoffice address is in Houston, in Harris county, Texas.

DAVID BOAZ,

Applicant.

Subscribed and sworn to before me, this 20th day of January, 1893.

FRANK BROWN,

Clerk Travis County, Texas.

[Seal.] By Jno. W. Hornsby.

OBLIGATION.

State School Lands.

\$1248.

No. —

For value received, I, the undersigned, do promise to pay to the State of Texas the sum of twelve hundred and forty-eight dollars, with interest thereon as hereinafter specified, the same being for the balance of pur-

chase money for the following described tract of land, purchased by me this day of the State of Texas, in accordance with the provisions of an act of the Legislature of said State, approved April 1, 1887, entitled "An act to provide for the sale of all lands heretofore or hereafter surveyed and set apart for the benefit of the public free schools, the university, and the several asylums, and the lease of such lands and of the public lands of the State, and to prevent the free use, occupancy, unlawful enclosure, or unlawful appropriation of such lands, and to prescribe and provide adequate penalties therefor," and the act amendatory thereof, approved April 8, 1889, to-wit: 640 acres of section No. 16, block No. —, township — in Liberty county, surveyed for the — by virtue of certificate No. 774, issued to the Houston and Texas Central Railway Company.

The annual interest of five per cent upon all unpaid principal, together with one-fortieth of the original principal, I am to pay or cause to be paid to the State of Texas, at Austin, Travis county, Texas, on or before the first day of each August thereafter, until the whole purchase money is paid.

And it is expressly understood that I am to comply strictly with all the conditions and requirements, and am subject to all penalties contained and prescribed in the above recited act.

Witness my hand this 20th day of January, A. D. 1893.

DAVID BOAZ.

[Endorsed.]

19061. Detached sections No. —. Application of David Boaz to purchase section 16, block —, Tp. 774 of Houston and Texas Central Railway Company in Liberty county. Received January 20, 1893. Awarded February 9, 1893.

W. L. MCGAUGHEY,
Commissioner.

(15771)

File 35082. Liberty county school land. Application and obligation. David Boaz. Filed January 20, 1893.

W. L. MCGAUGHEY,
Commissioner.

GENERAL LAND OFFICE, }
AUSTIN, TEX., May 2, 1893. }

I, Andrew J. Baker, Commissioner of the General Land Office of the State of Texas, do hereby certify that the above and foregoing is a true and correct copy of the original, with all endorsements thereon, now on file in this office.

In testimony whereof I hereunto set my hand and cause the impress of the seal of said office to be affixed, the day and date last above written.

ANDREW J. BAKER,
Commissioner.

Q. I will ask you another question, Mr. McGaughey: If at any time in any of these sales was there any intention to favor Mr. Lawless or Mr. Boaz or Mr. McLain, or anybody else?

A. I never meant to favor anybody; didn't know Lawless was in the office; I never saw him there.

Mr. Walton: The respondent will rest. We don't desire to introduce any more testimony. The witness Kelly is in the house, but we don't desire to take up the time of the court by examining him. If the other side or any member desires him, that is with them. Mr. Kelly is the man who made the reclassification of the timbered lands where the timber was sold. Respondent rests.

Mr. Henderson offers in evidence the testimony of Colonel McGaughey taken before the investigating committee, which was tendered to the respondent's counsel, who retired and read same.

Mr. Walton: After reading the testimony, while there are some verbal inaccuracies, the respondent will make no objection and let it go in.

The testimony was then read as follows:

COMMITTEE ROOM,

AUSTIN, TEXAS, March 15, 1893.

Hon. W. L. McGaughey being duly sworn, testified as follows:

Q. At present you are Commissioner of the General Land Office, are you not, Mr. McGaughey?

A. Yes sir, I am.

Q. You have in your office what you call the school land department, have you not?

A. Yes sir, I have.

Q. Who is at the head of that department?

A. My son. My youngest son, John McGaughey.

Q. What is the head of that department called?

A. The Chief Clerk of the school land department.

Q. What are the names of those parties who work under him in his office?

A. Mr. Harris, L. C. Clark, Sul Ross, Jr., Phelps and Gillespie.

Q. Well, how old is your son John?

A. Well, I suppose he is about 23 years old—I am guessing. I could get his age in a little while, but that is about his age.

Q. Does he consult with you about the sale of school lands?

A. Yes sir, he does.

Q. What particular part of the school land department does he attend to?

A. He controls the sales of the school land department, and I approve or disapprove them, as I think is in accordance with the law.

Q. How long after an examination is made is it before you approve the applications?

A. I can not tell about just how long. I sold some lands on yesterday and they were passed upon in an hour.

Q. Were the Harris county lands placed on the market at different times?

A. I think so. I always notify the county clerk of the county in which the lands are sold and then give three days notice before I sell the land.

Q. What is your object in giving three days notice before selling the land?

A. My object is to give anybody a chance to buy as actual settlers who may be living in the counties in which the lands are sold or who live at a distance from Austin. People can apply by telegram, and then we can wait until the application comes through the mails.

Q. Is the map we have here the original map of the Land Office?

A. No, sir, we don't take the maps out of the office as they are forbidden to be taken out. Well, I can send them over by the clerk over there. This map that you have is better than the office map. From the office map you would not know anything about the sales. It would take the clerk or some one that is posted to be able to understand anything from it.

Q. Are those maps correct maps that you have over there. Do they show all the different sales of the office?

A. Yes, sir, I suppose they are correct. I had a good draftsman to make them.

Q. Who made them?

A. W. H. Warren. I believe his name is W. H. Warren. I won't be sure as to his initials; anyhow, there is but one Warren in the office. I suppose he fixed them up correctly. You can take our sale record and find out whether these maps that you have here are marked correctly.

Q. Do you remember the date on which you wrote to the clerk of Liberty county that you had put the lands in Liberty county on the market?

A. No, I don't remember the date on which I wrote him to that effect. I gave him notice of the fact that I had done so. I told him that on that day, whatever day it was, that they would go on the market, but we always wait three days here before allowing sales to take place.

Q. You don't give the county clerk notice three days before you put the lands on the market, do you?

A. No, but we don't sell until we get notice that he has received our classification. As evidence of this the county clerk came up and bought some of the land himself, which shows that he had at least three days notice of the fact that the lands had been put on the market.

Q. You did not sell the land before you gave the clerk notice that you were going to sell it?

A. No, sir, I don't think I did; we send out so many letters that I can't read them all; sometimes we send out two or three hundred letters daily, and I don't have time to read them.

Q. Would you receive an application until you had received notice from the county clerk of the county that he had gotten notice that the land was placed on the market; that is an application to purchase lands by parties here or elsewhere?

A. No, sir, I would not until I had received his acknowledgment, either by letter or telegram, that I had notified him that the lands would be placed on the market.

Q. Can you give to us the acknowledgment of the clerk that you had notified him the lands were to be placed on sale at a given time?

A. I think so; I think I have a telegram from him to that effect. I think, too, that there is a letter to same effect. I always save everything I get concerning the business of the department. There is no secret in that sale; none on my part. I think the county clerk came up in person, before the lands were sold, and bought some of them.

Q. What position does Mr. Harris hold with you in the Land Office?

A. Harris is corresponding clerk there.

Q. Did any of his relatives buy land?

A. Yes, sir, his relatives bought land. I would sell lands to any body that wanted to buy them. Imboden's brother is clerk in my office, and if Senator Imboden wanted to purchase lands, I would sell to him, as I would to any other man in Texas.

Q. Did Harris sell the lands to his father-in-law, Mr. Schwartz?

A. No, sir. Harris said he would not sell Schwarts land.

Q. Do you remember the date when he bought the land?

A. No, sir, I don't remember the date.

Q. Was the land bought isolated and detached land?

A. Yes, sir, it was.

Q. Who sold the land to Mr. Schwarts?

A. I sold him the lands myself.

Q. What numbers did he buy?

A. He bought numbers 16 and 30.

Q. Is the land down there all detached?

A. Yes, sir; it is all detached.

Q. Is there no land on that map that is not detached?

A. No, sir, none marked. I say all of it is detached under the act of 1887 and 1889; that is my ruling. I think I have the authority of the law for it, and I have the ruling of my predecessor, also, as he sold some lands under that act. To illustrate what I mean, I would say that a bunch of live oak trees on the prairie, separated from the others of the forest, would be detached and isolated from the forest. I say this, because that is the only way I can construe the law on that subject.

Q. How do you explain the question as to the matter of attached lands? Please explain it again.

A. I stated that I considered the lands in Liberty county as detached lands, and illustrated by saying that a bunch of live oak trees situated on the prairie would be isolated and detached from the forest. The latter clause of section 22, act of 1887, or the act of 1889, as amended, says: "All sections, or parts of sections, in all counties organized prior to January 1, 1875, except El Paso, Pecos and Presidio, which sections are detached and isolated from the public domain, may be sold without settlement to any one except a corporation." Now, that is the law on the subject.

Q. How was these lands surveyed?

A. By the railroads. Some got in solid blocks by special act, however, but most of the railroads got their lands in separate blocks.

Q. Well, are they detached lands?

A. No, sir, they are not. The corners are not detached.

Q. But the law says that El Paso and Presidio are detached and isolated. How is that?

A. O, yes; whole counties are laid off and sold like them, except in the case of university lands.

Q. Why did you wait so long to place those lands on the market?

A. They are blessing me down in that country about it. I had a letter from there the other day. A man down there had bought a ditching machine run by oxen. He said that before the lands were sold he could not go through there, but since the lands had been sold they were enabled to ditch through them, thus doing the country a great deal of good. He said that now he could ditch it and go through it. I think I did right in selling it. The country was benefited by it. The citizens down there say so.

Q. But why did you wait so long to place these lands on the market? That is what we want to know.

A. Well, I was just going to tell you. I think the act of 1887 left it to the discretion of the Land Commissioner to put them on the market, and in accordance with that act I used my discretion. Often lands have been forfeited, after being sold, and at least two-thirds of that land will be sold at the end of the year. As it is, it is bringing some money to the State, and it is because there is now a sort of boom up down there, but they will be forfeited by the end of the year and have to be resold.

Q. Mr. Harris' father-in-law and Mr. Ross' uncle bought some land down there, did they?

A. Yes, sir; they bought land down there.

Q. What was Mr. Ross' uncle's name?

A. I think his name is Ross.

Q. Did you know him?

A. I never saw him before in my life.

Q. The land they bought is in Liberty county, is it?

A. I don't know where it lies; at least I fail to remember. They bought some land; we sell to anybody except to clerks in the office. I tried to find out whether my clerks did buy any. I told them I would discharge any of my clerks whom I found buying those lands.

Q. Did any of Mr. Phelps' relatives buy any land at the office?

A. I don't know. Gillespie's brother bought some from me. He was a professor up here in one of the schools, and a nice man. I really liked him and had no reason for not selling to him.

Q. Did Mr. Gillespie's son buy any lands?

A. I don't know.

Q. How did you find out whether or

not any of your clerks had bought lands?

A. I investigated, and they told me none of them had bought any land. I was satisfied with what they told me about it. All I could do was to take their word for it, and that is all I required of them.

(We represent the people in this matter, and we want to know the facts in this matter.)

(McGaughey: Yes, so do I, and I am willing that you know all. When I first heard that the clerks in the office were buying lands I was as mad as thunder. It would make anybody mad, whether relatives or not, and I could not help being mad. I heard that my clerks had been dealing in and buying up lands. That was what made me mad. I would not object to selling any man's relatives lands, because they have a right to buy them. I sold the Governor's brother-in-law a lot of land, a section, as an actual settler.)

Q. Who is the Governor's brother-in-law, and where does he live?

A. Mr. Stinson, I believe, is his name. I don't know where he lives.

Q. Did you make any distinction as between the actual settlers and those who were not?

A. If I found there was an actual settlers who wanted to settle on the lands, and any parties had bought them as not actual settlers, I would make them get off and sell to actual settlers. I would always cancel the sale of one who was not an actual settler, if I found out that an actual settler wanted to buy the land.

Q. If you were convinced that these sections were not detached, could you cancel them?

A. If I found out that I was wrong I would certainly cancel every one of them. I think I had a perfect right to sell under section 22 of the act of 1887, though.

Q. Did you not consult with the Attorney-General or anybody about the sale of these lands?

A. After the racket took place I thought about consulting with the Attorney-General, but I thought I would let the matter alone until the investigating committee should act upon it. I intended to consult with him in regard to the matter. I will ask him for a written opinion on the subject.

Q. Have you ever had a doubt as to whether you had a right to sell these lands as isolated and detached lands?

A. No, I have not.

Q. You say that very large bodies of

land where it lies together ought to be detached. How much would you require in a body in order to be detached?

A. Well, where very large bodies to be sold are together it ought to be detached.

Q. How large a body would have to be together before you would require it to be detached?

A. Well, say twenty or twenty-five sections coming together, I would not consider that it was detached and isolated and I would not sell it as such. We will sell it all again next spring, anyhow. We are selling every spring over and over. If the interest is not paid we always forfeit the lands, and this occurs every year. I am glad you asked me this question.

Q. You say you sold the land to Mr. Schwartz yourself, do you?

A. I did.

Q. Did you wait three days after the county clerk of Liberty county had received your letter before you sold to him?

A. I don't remember whether I did or not. Of course, I suppose I did, as that is the law, or rather the custom, of the office to do so, and I always try to do what is legal and right. We never sell lands without giving three days' notice that we are going to sell.

Q. You hold then, Mr. McGaughey, that all of this land here is detached land? This land you have marked in red?

A. I do.

Q. In all these sections up here that you sold prior to January 20, did not you classify some of them and not classify others?

A. These that I classified were all on the market; that marked red has been on the market for some time, and some of it has been forfeited for failure to make payments and had to be put on the market again.

Q. Well, did you classify some and not classify others?

A. No; not those I put on the market; that is, those I sold were all classified. When you put a piece of land on the market you must classify it.

Q. All those lands in Harris county, then, marked in red, were put on the market as detached lands, were they?

A. Yes, sir, they had been classified and sold as detached.

Q. Well, Humphries bought some land down there. Did he buy detached lands or did he buy as an actual settler?

A. Yes, I sold him some land. I sold to him as a settler.

Q. Is Humphries a negro?

A. I don't know whether he is or not. I sell land to negroes. We sell land to anybody that wants to buy. Why, I would just as soon sell to a negro as anybody else, if he makes his application according to law.

Q. How much land did you sell to him?

A. I think I sold him three sections.

Q. And you sold it to him as an actual settler, did you?

A. Yes, his was subject to sale to actual settlers, and I sold it as such.

Q. What do these sections marked in blue indicate? What is your object in designating them in that way?

A. Well, I think I instructed them to tell you they were marked blue to show that they were the last sold. The red ones show older sales.

Q. When did you sell to Humphrey?

A. I sold to him in 1892. He only bought three sections.

Q. How many sections would you sell to a man as an actual settler, that is, do you limit purchasers in buying them?

A. I would not sell over four sections to an actual settler.

Q. How many sections would you sell to a man that was not an actual settler, a speculator?

A. Well, I would not sell him more than four sections either. We never sell more than four sections to any one.

Q. Is there any law for this action?

A. None that I know of. It is a ruling of the office.

Q. Could a speculator buy four sections of land in Harris and four sections in Liberty county?

A. No. If he wanted to buy in Liberty county after having bought in Harris he would have to prove that he had sold in Harris before we would sell him land in Liberty county.

Q. How would you ascertain whether or not he had sold these lands in Harris county?

A. I would require his affidavit to the fact that he had sold them, and that he had not in his possession more than four sections. I would take any man's affidavit in a business transaction, for that is all we can do.

Q. Is section 22 sold to a speculator?

A. I think so. I think it was put on the market subject to sale under section 22, act of 1887, which allows it to be sold as detached lands to any one except to a corporation.

Q. Why do you limit the actual settlers to the purchase of four sections?

A. Well, we had rather the specu-

lator would not get more than four sections. The actual settler has just the same right to buy as the speculator, and the speculator the same right as the settler, and we think it best that the speculator should not have more than four sections. We want to protect the interest of the actual settler in these transactions as far as we can. I don't stand in with anybody, and I don't know anybody in land transactions. I simply want to do my duty. If the law limits the actual settler, it ought to limit the speculator in the matter of buying lands. My selling those lands has been of value to the State. I have a letter from down there. There is a fellow down there, William Stacy, trying to put in a rice farm; he has been trying to get a ditch through those lands, and could not get through the State's lands. After I had sold the lands he writes that it was the thing.

Q. Can you send over to the Land Office and get a copy of the letter you wrote to the county clerk of Liberty county, together with his reply?

A. The office is closed now, but I can get them for you on to-morrow, I think. I know I have got them somewhere. The letter I have is a correct copy, and I am willing to swear to it.

Q. Did you make the sale to Schwarts after you got the letter?

A. Yes, I did; and I know I have his letter, and I think I can find his telegram.

Q. Now, gentlemen, please allow me to ask a question: I want to know what the charges are you have against me?

A. We have brought no charges against you. We are simply investigating as to the sale of these lands.

Q. You would hold in the case of the bunch of live oaks in the prairie detached from the forest, would be the detached land?

A. We have stood by the settler in this matter all the way through in selling these lands. Yes, sir; I think the bunch of live oaks would be the detached land, and subject to sale to anybody under that act.

Q. What part of the land would you class as the forest?

A. Well, it might be that the forest consisted of 15 or 20, or 10 or 1000 trees, or it might embrace a whole county. I would not call them isolated and detached, but if a tree stood off at some distance from the forest I would say it was detached. So fifteen or twenty sections clustered together could not be called detached. I would call

as much land as twenty or twenty-five all together, or even fifty sections together, without any water on it in the winter, would call it isolated and detached lands.

Q. Would fifteen or twenty-five sections collected together be classed as detached lands if it had no water on it in winter?

A. That would be my construction of the law.

Q. Well, what body of land would you class as a forest; or, rather, how large a body would be necessary to be so classed?

A. Well, I don't know that I could say exactly how small a body of land would have to be to be classed—that is if it was not in a solid block—to be classed as detached lands.

Q. Has no person remonstrated with you as to your conclusion about these lands being detached and isolated lands?

A. No, sir. Some parties at first said they did not agree with me as to their being detached and isolated. Now Baylor and Roach and Bramlette and others conferred with me about the sale being not in accordance with the statute.

Q. Have you an attorney in your office?

A. Yes, sir, I have.

Q. Did you consult with him as to his opinion on the subject?

A. Yes, sir; and he did not agree with me. He said that they were not detached or isolated lands.

Q. Do you always take his opinion, or do you leave such matters to him for settlement?

A. I take his opinion when I think it is right. I know something of law myself, and I think I know something about—

Q. Did you not at first, when the question was brought up before you, say that you would cancel every one of the sales?

A. Yes, sir; when I learned my clerks, or rather when I first heard that my clerks had been dealing, buying those lands, I said I would cancel all sales.

Q. Did you not say to those who approached you about the sales that you thought they were illegal and that you would cancel them?

A. No, sir. I have always held that they were simply detached lands, and I have along thought that I was doing right, and I still think I did right.

Q. You told your clerks to put this land on the market, did you, and not as lands for sale to actual settlers?

A. I examined thoroughly to see if

these lands were detached lands, and when I found they were, I put them on the market. That is, I told my clerks to put them on the market.

Q. Did any of the clerks in the office think as you—that they were detached lands?

A. Yes, I think so—my son thought so, and so did others.

Q. Did not your son tell you that he thought you were doing wrong in putting them upon the market as detached lands?

A. Well, I think at first he thought so, but he afterwards agreed with me that I was right, and I think he still thinks so. I took the position that I was right in the matter, and that if I were to cancel those sales, it would put people to a great deal of trouble who were innocent purchasers, if any wrong had been perpetrated, and that it would not be good policy to cancel them.

Q. But did you not say that you never had a doubt but that you were right in the matter? You now say that you did not want to cancel them because it would make innocent purchasers suffer.

A. I did not know at first, when I had heard of so much talk, but that they had been illegally sold, as everybody was talking about it. I have had this whole town to stand against for nearly two years, from one end of that avenue to the other. I just thought that it might be possible that some people might have imposed on me by saying the lands were illegally sold, or rather by buying the lands illegally. But after I had examined into the matter I was fully convinced that I was right, and I also said that I would stand by the transaction. If that land was only for actual settlers I would not have sold it.

I would not sell valuable land that way. I would have sold to settlers.

COMMITTEE ROOM,

AUSTIN, TEXAS, March 20, 1893.

Hon. W. L. McGaughey again appeared before the committee, with some additional testimony, and said he wanted to have a talk with the committee.

I just wanted to come over and show you all some precedents I had. I did not know I had them, so many of them, until I began to investigate these matters. I find that all of Medina county was put on the market by my predecessor several years ago, and there have been thousands of acres of land sold by former Land Commis-

sioners under the same ruling that I have sold under.

Q. Can you show that these lands were put on the market, and not subject to sale to actual settlers, as is required by section 22, act of 1887?

A. These lands have been on the market all the time, and we can show you the list of lands in the office, when sold, how sold, and all about them. A great deal of the lands in Harris, Liberty, and many other counties were sold, just before I went into office, just the same way. In almost every county in the State, the school lands have been sold in the manner in which I have sold them. For instance, in McMullen, McCulloch, Medina, and other counties.

Q. How did you get this information about the sale of these lands?

A. We have a list showing the lands placed on the market since 1872, in the office. Stephens county also was placed on the market and sold, and so on with many counties in the State, and no one ever undertook to doubt but they were sold in accordance with the law.

Q. Well, was Stephens county organized prior to the 1st day of January 1875? It may be that it don't come under this act.

A. Yes sir, Stephens county was organized in 1872, I think. It was first known as Buchanan county, you know.

Q. Was McCulloch county and McMullen county organized prior to 1875?

A. I think they were organized prior to that time. I don't know, however, whether they were or not. Now, we have Stephens county, which was already organized at that time, and its lands were placed on the market and sold as detached lands; so was McCulloch; so was Medina. These were put on the market and sold as detached lands by my predecessor.

Q. Well, don't you know that section 22 says that these lands can not be sold save and except to actual settlers?

A. Well, in all counties organized prior to 1875, it requires them to be sold to actual settlers, except El Paso, Pecos and Presidio counties.

Q. Why then, did you place them on the market?

A. My predecessor had done so, and had done so because he thought he could do so; he thought like I, that these lands not fit for actual settlers could be rightly classed as detached lands and sold not to actual settlers.

Q. Yes, but section 22 says that "the Commissioner of the General Land Office, under the direction of the

Governor, may withhold from lease any agricultural lands necessary for purposes of settlement, or in his discretion he may lease such agricultural lands in small quantities for a less period than five years, as the public interests and the development of the country may require; and no agricultural lands shall be leased, if in the judgment of the Commissioner, they may be in immediate demand for settlement, but such lands shall be held for settlement and sold to actual settlers only under the provisions of this act; and all sections or fractions of sections in all counties organized prior to the first day of January, 1875, except El Paso, Pecos and Presidio counties, which sections are detached and isolated from other public lands, may be sold to any purchaser except to a corporation at not less than \$2.00 per acre, upon such terms as the Commissioner of the General Land Office may prescribe." How could you sell the lands in Harris and Liberty counties, when the law says they are only to be sold to actual settlers? You did not sell to actual settlers, did you? You did not lease them temporarily, did you?

A. No sir. I sold them, because I construed the law to authorize me to do so. I thought I was acting in conformity with it, and that I was acting in the best interests of the State to sell them. The land was not fit for settlement, and never had been thought fit for settlement; they are really not fit for settlement.

Q. You changed your ruling with regard to these lands, and put them on the market for sale; you also placed them on the market before you had received notice from the clerk, as the letter will show, did you not? In Liberty county Boaz bought lands the same day that you put them on the market. Haldeman, Swartz and Simmons all bought lands before they were placed on the market, according to the letters from the clerks, and the dates of the applications for the purchase of those lands, did they not?

A. Yes sir, I changed my ruling; I thought I was acting right; I thought all I did was for the best. Now in regard to the dates of purchase; I never paid any attention to them; I don't have time to notice them. I may have gotten some of the dates wrong in my testimony here before you the other day. I can't remember dates. In fact I don't know what I did say, I said so many things. Giving testimony is not like making a speech, and I may have given it in wrong; but if

I did, it was an error of the head and not of the heart. I may have done wrong in my actions in selling the lands as I did, but if so, I did not know it, and I only am conscious that I did what I thought was right. I am not trying to persuade you that I am right against your judgment, for you will, of course, act, as I did, in the way that you think is right. If I have done wrong, it is only an error in judgment, and I hope the committee will not reflect on me. I would like to know what the charges are that you have against me.

Q. Why do you desire to know that, Colonel? You don't think that any of us would do you wrong, do you?

A. No sir. I would trust anyone of you anywhere and in any way. I would like to know if there is anything charged reflecting on my character; I had rather die than to have it said of me that I am not an honest man; I had rather die than to cast a reproach upon any of my family. I have held positions of honor and trust and I have never yet done anything to cast any reflection on my character or to leave a stain on the fair name of my family. If our differences—if these charges arise only from a matter of opinion as to the law, then I have nothing to say. You have a perfect right to investigate, and you have a right to your opinions on these questions, and I would not try to influence one of you to think as I do if you see fit to differ from me. I have another request to make. That is this: If the testimony is published, if it is your intention to publish it, I would like to see it; I think it would be but justice to myself and to the witnesses who have testified here that we see it.

Com. (Well, we don't know whether it will be necessary to publish anything but our conclusions or not. We have not time to-day to talk about that matter.)

Gentlemen, have you any other charges against me except that of selling land not in accordance with the laws?

Committeeman: Colonel, why do you ask that question?

A. Well, a man told me that my clerks were all very much frightened; that they had heard that I was going to dismiss such of them as testified in this case. It has also been said that I had expressed myself as being very mad because I had on this committee gentlemen who were my personal enemies. I desire to say that all such reports are untrue. I have never said one word at all about anyone nor ex-

pressed an opinion as to my feelings on this question. Various rumors have come to me, and I just wanted to know whether or not you had anything other than a charge of violation of the law.

Committeeman: There has nothing been said with regard to your personal character, nor anything in any way reflecting upon your integrity and honesty.

McGaughey: Well, I am glad to know that these reports that have come to me about my being mad at the committee for investigating this matter and that I intended to turn off all my clerks, or such as testified against me or in my behalf, are not believed by this committee, for I assure you that I have never expressed an opinion about it, and I am sure that I have the very kindest feeling for all the committee and the clerks in my office.

McGaughey: Well, gentlemen, are there any other questions that you wish to ask me?

Committeeman: Colonel, we understand that the Legislature of 1891 appropriated \$2250 for the salaries of two filing clerks and that you gave the two \$2600; that in order to do so you drew from an appropriation of \$6000, giving one of the clerks \$1400 and the other \$1200. Please tell us about that.

McGaughey: Well, the circumstances in the case are these: The House gave me an appropriation for two filing clerks; the Senate amended it by putting my chief filing clerk's salary at \$1400 and my other one at \$1200, and when it came into a free conference committee the committee gave me \$6000 and the \$2250 besides. The Senate and the House concurred in this arrangement.

Q. The Legislature did appropriate \$2250 for the salaries of two filing clerks, and you gave one \$1400 and the other \$1200, did you not? And did you not, in order to make the other clerk's salary \$1200, take the remainder, \$350 necessary to make his salary \$1200, out of the appropriation of \$6000?

A. Yes sir, I was advised by my chief clerk that he thought I had a right to do so; that there was no violation of the law in doing so. Judge Bramlette said that he thought I ought to give the clerk \$1400, as he thought I could take it out of the fund, and that he had had that salary for several years, and that it would not be anything but right to give him the same salary he had been getting. I did this because I thought it was right. I never thought it would

be any misappropriation of funds. I would be glad if you would send for Mr. Bramlette and let him give you his ideas about the matter.

Q. I understand the two men got \$2600 as filing clerks and the Legislature only appropriated \$2250 for them. Is not this the case?

A. Well, as filing clerks I would not say they were only such, for they have done a great deal of other work that was required of them and which could only be done by Mr. Gaither and his assistant. Attorney-General Culberson will tell you that he has been a vast deal of service to him in furnishing him the data he was necessarily compelled to have in several important cases. The filing clerks have done a great deal of work not in line, altogether, with the duties of that department but which has necessarily to be done by them, and I think I did right in paying them in the manner in which I did.

Q. Well, Colonel, would you not have a right to give him the sum of \$1500, just as much right to give him that sum, as to give him the \$1400 which you did give him?

A. No sir, he had for several years been getting that salary. The Legislature appropriated it for him, as I understood the law, by giving me the extra \$6000 for clerk hire, from which I took the money necessary to pay the two clerks. He had gotten \$1400 for several years. He had gotten that sum under my predecessor, and I was only pursuing the same line by giving him that amount that was pursued by other Commissioners.

Q. Colonel, in view of the fact that some of your clerks had been reduced from a salary of \$1150 to \$1000 would you go and raise it back to that sum?

A. No sir. I would not do that. I never would have held that Mr. Gaither had a right to continue at his present salary if the Senate had not amended the bill giving him that amount. I know I did not have any desire to do wrong in the matter, and I don't think I have done wrong. I would not, for anything, do a wrong in the transaction of the public business, if I knew. I could not have any desire to wilfully misappropriate money. I think too much of myself to do so, and then I consider that I would be casting a reproach upon my family to take any moneys and misappropriate them or violate any law. If I have made a mistake, I have made it, and can't help it; but I trust that you will not think for a moment that I am wilfully guilty of doing a thing

that is wrong. I know I have not had any conspiracy with any parties, and I don't think anybody in the office has.

Committeeman: Colonel, we think that you are entirely above any suspicion as to conspiracy, and we do not consider that you have done anything to cast a stain upon your name or your family at all.

McGaughey: I know there has not been anything done wrong about the office intentionally; there has never been one cent of money taken that I know of, that was not used for the interest of the State. There has not been a postage stamp taken.

Committeeman: The way we construe the law, there are about 50,000 acres of land gone.

McGaughey: Well, if the committee and the Legislature say so I will cancel those sales to-morrow. If you think it a mistake, and that I have made an error, I would gladly cancel them. I know there has been no conspiracy entered into with any one in those sales, and I don't think any one has been unduly favored in their applications to purchase lands.

Committeeman: If you were charged with any conspiracy, we would tell you so Colonel. It might be construed that in your notice to the Liberty county people that your notice to the county clerk was only a mock notice, as the applications for sales and the dates of purchase show that you did not hold up on the lands till the people of Liberty county had an opportunity to buy.

McGaughey: The law requires me to notify the county clerk when lands are put on the market. This I did, and I did not know of any lands being sold before the notice of the clerk's receipt of my letter had been received. I had no interest in the world in the lands, no personal interest, and had no special friends in the transaction. I don't even know who did purchase the lands, or did not know at the time they were purchased.

Q. Did you know anything about the mining stock given by Mr. Boaz to John and Mr. Phelps?

A. I did not know it at the time. John came to me and told me afterwards about it, though. I told him that if I were him I would burn them up. Boaz wanted to sell me some of the stock in order to get up a boom and sell them, but I would not buy it. I was not aware that Mr. Phelps had any stock until afterwards, as I was probably not down there in his room for some time. If I had been down there in that room when they got the

stock I would have rebuked the whole thing. I told them it was wrong and that I was sorry that they had received the stock.

Q. Did Mr. Phelps and John McGaughey consider that they were receiving mining stock that was really worth \$500 each?

A. No sir. Phelps said that all that was necessary to do in order to get the stock was to sign his name and take it. I don't think he nor John thought that the stock was worth a cent. I know he tried to give me some of the stock and I did not consider that it was worth anything at all. If the committee think there was anything wrong done by my boy in taking the stock, that is that he is any way implicated, I would be glad to have Mr. Boaz come down and testify here.

Committeeman: His testimony would be no better than that of John and Mr. Phelps. They say themselves that they took the stock merely as a gift and did not expect anything in return for it.

Q. What could be the purpose of a land speculator singling out these two men and not giving the others any?

A. He offered others in the office some of the stock. He offered me some of it, and he said he would like to give all the boys in the office some of the shares.

Q. Colonel, it has been said that you put your son into a place somewhat difficult to fill. Don't you think you have done this in putting him at the head of that department?

A. I had rather risk him than anybody in the office for the duties of that position. No longer than this morning he carried several thousand dollars and placed it in the Treasury. His books and his papers are cleanly and accurately kept; he is a fine business boy, one of the best I ever saw. He is well educated and in every way fitted for the position. He is a good stenographer and one of the best business boys I ever saw. In fact, both of my boys are fine clerks and do excellent work in the office.

Q. Did you not think he acted very indiscreetly in accepting a present, being at the head of the department?

A. Well, he did not think anything about it. He just accepted and thought nothing would ever arise about it. He would not do a wrong thing for anything; he is noble, upright and true, and is entirely above suspicion. He would not do a wrong act.

Committeeman: Yes, but the man at the head of that department ought to be a man that would think before

receiving any present from a land speculator.

McGaughey: Mr. Phelps is an old member of the Legislature and he did not think about doing anything wrong in accepting the stock merely as a gift, for he certainly did not accept it in the understanding that he would especially favor Mr. Boaz.

Committeeman: Well, whether or not he would accept a favor of that sort, and give one in return, you know that it would be so construed. People would think that as he has been favored, he would of course in return favor the one who gave him the present.

McGaughey: Well, I know that such actions are very indiscreet, but I am sure they never stopped to think about what they were doing or they would never have done so. I talked with my boy about the matter after he had received the stock, and he says that he intends to send it back to Mr. Boaz.

I am responsible for everything that is done in my office. I am responsible for all the actions of my boy. He has done nothing wrong at all. He is honest, noble, true and fully capable of filling any position in that office. I am responsible for everything in the office except the Spanish translator, Mr. DeBrae; he is, of course, held responsible for all he does.

Q. Are you responsible for John receiving those gifts?

A. No sir, I don't think I am. I don't like the way of their receiving stock, but they went ahead and received it without thinking what would be the result. I don't think the boys ever thought for a moment about the matter.

Q. Colonel, when you testified here a few days ago you said that you never placed those lands on sale until three days after you had received notice from the county clerk. Now the records show that you sold a number of the lands on the 16th. Why is this seeming inconsistency?

A. I did not think I sold any until I had received the notice. If I did I did so not knowing the facts in the case. It is impossible for me to know dates where I have so much to attend to. I told Mr. Morrison I could not keep up with the dates. I never look at the date of an award. I always ask my clerks when they bring in the correspondence if there are any special questions for me to examine, and that is all I can do, for we have hundreds of letters to look after. There is no law forcing me to give any special

time. The law don't require me to give the three days notice that I have already given. I have not all the time had that ruling in the office.

Q. You had that ruling in December and January, did you not?

A. Yes sir, that was the ruling at that time.

Q. Why was not that ruling carried out?

A. I gave those orders and I thought they were observed. It was certainly my purpose to carry them out. I have never tried to favor anybody in the sale of any lands while I have been in office. If the instructions have not been carried out, it was not my intention to fail to do so. Now, I sell to an actual settler at once. If he comes in to buy I would sell to him while he is in the house, if he wanted to buy.

Now, gentlemen, in conclusion, I want to say that I have heard it said that you had thought hard of me for saying that the committee was not my friend; you are all my friends so far as I know, and you have certainly treated me most courteously all through this investigation. I have naught against any one of you. If I have done wrong it has been an error of the head and not of the heart, and I hope you will be just as lenient with me as you can. We all make mistakes, and I hope you will think of this.

I have stood by the State in all my transactions, and I want to ask of you to deal just as easy with me as possible.

If anybody must be censured, censure me, but don't censure my boy, for he has done nothing wrong at all. I would far rather you would censure me than my boy. I would rather be degraded in the eyes of the world than to have him censured. I have not much longer to live in this world, but he has his life before him, and I don't want to see him suffer, as I know he is entirely innocent in every particular. I have fought for my life on the battle field. I have fought for my country and my people, and I have always tried to stand by my people. I would go into the hottest of battles for the reputation of my family.

(The Harris county and the three county maps are offered and received in evidence.)

Judge Jas. A. Breeding, sworn for the prosecution testified:

Q. Where do you reside, in Harris county?

A. Yes, sir.

Q. What business are you engaged in?

A. The practice of the law.

Q. You are acquainted, in a general way, with the land values?

A. I have no positive knowledge on that subject, except such as I have acquired through practice and business.

Q. Here is a map of Harris county, the points of the compass you get. These spots in blue are certain sections of school lands recently sold in that portion of the county. Judge, wouldn't the Missouri, Kansas and Texas road pass near these lands?

A. I don't believe I can tell in here just where the Missouri, Kansas and Texas road does run, but think it does.

Q. Judge, haven't you had occasion to know the value of these lands in that locality?

A. Well, I have had occasion to know in this way: I had a suit which embraced a tract of land near the school lands in Harris county.

Q. And you had occasion to know the value in that suit?

A. Only such as arose in the case, and in the preparation of the case.

Q. State whether or not you learned the value of that tract.

Mr. Lightfoot: Do you propose to prove his own knowledge?

Henderson: I believe he stated what the party refused to take for the lands if recovered.

Q. Did you know their value.

A. No sir, not of my knowledge. I will state the party refused to take \$3 an acre for his title to the land he was claiming pending the litigation, but after the litigation I don't know that he refused anything, but he said he wouldn't take \$5.

Q. Can't you point out the tract on the map?

A. It is the J. P. Parker survey of 1280 acres.

CROSS-EXAMINATION.

Q. You don't know the land yourself?

A. No sir, never on it in my life.

Q. Don't know anything yourself?

A. Only what I have stated as to the value.

Q. It is a private survey?

A. Yes sir, the Parker survey.

Q. When was it located?

A. In 1857 is my recollection.

Q. Do you know what kind of land it is?

A. I know nothing but what you have heard.

Q. You can't tell anything of your own knowledge as to whether it is farming or pasture land?

A. No, sir.

(Here the witness was dismissed and the case closed.)

Counsel for relator and respondent stated that they had agreed not to argue the case *on the facts*, providing the court would allow them to submit one written argument on each side, the same to be published in the Court Journal immediately following the testimony.

Granted by the court.

Thereupon Hon. J. H. Henderson for the respondent submitted the following:

May it please this High Court of Impeachment:

When it is remembered what has already been done in this case during its progress, it is not deemed advisable to discuss at length the law; especially, is it thought useless to present law and argument, at this stage of the case, on the first proposition contained in the general demurrer; that is, that this court has not jurisdiction and power, under the Constitution of Texas to receive, hear and determine upon articles of impeachment; in other words, whether or not article 15, sections 1 and 2, of the Constitution of Texas are self-executing. Therefore, I pass that question by without discussion.

As to the second objection presented in the general demurrer, that the articles of impeachment do not contain any impeachable matter, under the Constitution and laws of Texas, I desire to say this much:

As I understand, we can only look to the Constitution and laws of Texas for the law of this case. We have the right to look to the parliamentary law of England, which has developed in about the last 500 years, and to that of the United States and of the several States for a proper construction and interpretation of the meaning of what law we have on impeachments, but not for the law itself, which is to govern this case.

In the long line of decisions in regard to what are impeachable offenses, we find that they are not harmonious. We find here a decision by one political party against another, another decision made in order to remove one party from office and put another in office on account of prejudice or personal friendship or enmity, and we find decisions for various other reasons for biased and prejudiced decisions by courts of impeachment, and these are, to some degree, the cause of decisions by courts of impeachment wanting in harmony. It is gratifying to believe that in the case before this Court there

exists no reason why we cannot arrive at and be governed by the true principles and law of impeachment; that in this High Court of Impeachment there is that unbiased mind and equilibrium which gives the sunshine of the law and facts, at high noon, when there is not a cloud to obscure the vision, shines on all alike, both to the side of the State and the respondent. There may have been a prejudice, and a one-sided investigation in a previous part of these proceedings, but here, on the top of the structure of the trial, especially when this body is resolved into a High Court of Impeachment, a court of law, we stand in the same sunshine for truth and justice and on equal footing for the purpose of arriving at the true facts of this matter:

"Like some tall cliff that lifts its awful form,
Scelling to the gale and midway meets the storm,
Though around its breast the rolling clouds are spread,
Eternal sunshine settle on its top."

Let us first look briefly to some of the law of this case. I am of the opinion that the best way, perhaps, to arrive at a true and correct definition of an impeachable offense is to go to those who are learned in the law and who are not so circumstanced as to be swayed by the proceedings of the hour when they give their views; and whose minds are free from all prejudice in the question, and who have no desire or interest as to acquittal or conviction in any particular case, and merely treating of the science and true principles of the law of impeachment. As such a definition I present to you for consideration the following by Prof. Theo. W. Dwight in a lecture to the law students of Columbia law school of New York. After reviewing the origin and history of the law of impeachment, both in England and America, he quotes the following, with approval, from Woodeson: "The trial differs not in the essentials from criminal prosecutions before inferior courts. The same rules of evidence, the same legal notions of crime and punishment, prevail. For impeachments are not framed to alter the law, but to carry it into more effectual execution where it might be obstructed by the influence of too powerful delinquents, or not easily discerned in courts of ordinary jurisdiction by reason of the peculiar quality of the alleged crimes. The judgment thereof is to be such as is warranted by legal principles or precedents."

Cushing, in his "Law and Practice of Legislative Assemblies," section

2569, says: "The proceedings are conducted substantially as they are upon common judicial trials as to the admission or rejection of testimony, the examination and cross-examination of witnesses and the legal doctrines as to crimes and misdemeanors."

Lord Chancellor Cowper, in an impeachment trial in 1715, said: "Though one of your Lordships suppose this impeachment to be out of the ordinary and common course of law and justice, it is yet as much a course of proceeding, according to common law, as any other whatever."

"If you had been indicted, the indictment must have been removed and brought before the House of Lords, Parliament sitting. In that case, it is true, you had been accused by the grand jury of one county; in the present, the whole body of the Commons of Great Britain, by their representatives, are your accusers." 4 Hatsell, 295.

"Friday, June 6, 1806: In the case of Lord Melville the House of Lords submitted the following question, among others, to the Court of Common Pleas:

"3. Whether it was lawful for the Treasurer of the Navy, before the passage of the act of 25 Geo. 3d, C. 31, and more especially, when by warrant from His Majesty, his salary as such treasurer as aforesaid was augmented in full satisfaction for all wages, fees and other profits and emoluments, to apply any sum of money imprested to him for navy services, to any other use whatever, public or private, without express authority for so doing, and whether such application by such treasurer would have been a misdemeanor, or punishable by information or indictment?"

"Monday, June 9, 1806: The Lords being met in the Chamber of Parliament, the Lord Chief Justice of the Court of Common Pleas, Sir James Mansfield, delivered the unanimous opinion of the judges upon the said third question, as follows: That it was not unlawful for the treasurer of the navy, before the act of 25 Geo. 3rd, C. 31, although after the warrant stated in the question, to apply any sum of money imprested to him for navy services, to other uses, public or private, without express authority for so doing, so as to constitute a misdemeanor nor punishable by information or indictment. This is the last impeachment case in England, and consequently the latest doctrine there, and we submit the same as going to show, that in order for the offense to be im-

peachable, it must be a positive crime."

Prof. Dwight also says: "The framers of the New York Constitution of 1777, held this view, for they couple together in the same sentence, impeachments and indictments, as though they were only modes of trial: 'In every trial on impeachment or indictment for crimes or misdemeanors, the party impeached or indicted shall be allowed counsel, as in civil cases.'" Art. 34. Now, if you will examine article 1, section 10, and article 4, section 11, of the Constitution of Texas, I think you will find these words, indictment and impeachment, so coupled in the same sentences, that they are characterized of the same kind of offenses. As Prof. Dwight says: "A basis for a very important conclusion has been laid. It is this: as there are under the laws of the United States no common law crimes, but only those which are contrary to some positive statutory rule, there can be no impeachment, except for a violation of a law of Congress, or for the commission of a crime named in the Constitution. English precedents concerning impeachable crimes are, consequently, not applicable."

In the said case of Andrew Johnson, such Senators as Bayard, Hendricks, Saulsbury, Trumbull and that class of lawyers and statesmen, took the position in regard to impeachable offenses as we take in the case before this court. They said that if in construing the Constitution of the United States and statute passed by Congress he was of the opinion that the statute was unconstitutional he was not compelled to wait until the courts declared the statute unconstitutional, but could act on his own judgment, and if he did so, even if he did not consult the Attorney-General, it was not impeachable, even if it turn out that he was wrong in his construction.

Authorities: Constitution of Texas, Art. 15, sections 1, 2, 3, 4, 5, 6, 7 and 8; Art. 1, sections 10, 19 and 29; Art. 2, section 1; Art. 4, sections 1, 11 and 23; Penal Code, Arts. 3, 7, 53, 57 and 58; 44 Texas, 64; 54 Texas, 153; 77 Texas, —; 78 Texas, —; American Law Register, Vol 14 page —; Cushing's Law and Practice of Legislative Assemblies; 4 Hatsell, 295; 4 Blackstone, 259; Andrew Johnson's case; Lord Melville's case; 29 Howard's State Trials; Cooley on Constitutional Limitations, 62, 67, 68, 69, 70.

The foregoing reasoning in regard to the impeachment law of the United States holds good in regard to the impeachment law of Texas, when we

only have constitutional and statutory crimes, and no common law crimes as such whatever.

Without discussing or even referring to the several provisions of our Constitution, and statutes and decisions, which I think bear upon this case and sustain the foregoing view, and without yielding that the propositions we have contended for, and which have been fully and ably presented by my associate counsel, when arguing the demurrers in this case, I come to the general proposition which is claimed by the managers in this case to be the true law that should govern this trial; that is as I understand, that this High Court of Impeachment alone is the judge of what is sufficient wrong on the part of respondent for him to be convicted, regardless of whether he has violated a positive law either civil or criminal. That in impeachment trials this is a High Court of Chancery.

Now, let us look at this case from this standpoint for a moment. Courts of chancery are as much bound by the principles of equity, jurisprudence and precedents as the common law courts are by the law which governs them. Let us come to this field of contest selected by the honorable managers of this impeachment, which we think we can safely do, and measure the case at bar by the general parliamentary law, as they claim it to be and as they say should be done, and still we think the respondent is entitled to his discharge. In this school of impeachment law, what is the proper definition of an impeachable offense, not taking into consideration our Constitution and statutes?

Perhaps the best considered case ever tried in the United States, unless it be the case at bar, was the impeachment case against Andrew Johnson, President of the United States. Doubtless this case is familiar to all the members of this court. You also know the trying time which surrounded this case. You know full well of the great prejudice which existed at that time against the President. You know that Benjamin Butler was no unimportant part of the prosecution and that he was spokesman for the prosecution, and you all know the history of Mr. Butler. I think, when we remember this much that you will agree with me that the definition given by the managers in that case, through the mouth of Mr. Butler, was as stringent against the respondent as anyone who belongs to the school, whose doctrines are

here invoked by the managers, as much as could be reasonably asked for, if not more, or at least considered in such cases. Here is the definition of the managers, in said case against President Johnson, of an impeachable offense:

"We define, therefore, an impeachable high crime or misdemeanor to be one in its nature or consequences subversive of some fundamental or essential principle of government, or highly prejudicial to the public interest, and this may consist of a violation of the Constitution, of a law, of an official oath, or of duty, by an act committed or omitted, or, without violating a positive law, by the abuse of discretionary powers from improper motives, or for any improper purpose."

Now, what are the leading elements of this definition?

1. The offense must be one in its nature or consequences subversive of some fundamental or essential principle of government, or highly prejudicial to the public interest.

2. It must be from improper motives, or for an improper purpose.

3. It must be a high crime or misdemeanor.

It will be seen from the generality of the terms, as was observed by Mr. Evarts, who represented President Johnson, that it was intended to avoid the necessity of actual and positive crime.

In the trial of the case of Judge Peck, it being an impeachment trial, Mr. Buchanan, who was chairman of the committee of managers in the case took the position: That the managers were bound to prove that the respondent had violated the Constitution or some known law of the land, and had committed some misbehavior in office. That is to say, it is not only necessary that he violates a known law, but that in addition thereto, he must be guilty of misbehavior in office. In the leading case in the world's history, so far as impeachment is concerned, the case of Warren Hastings, it was not claimed by the managers, nor was it claimed in Mr. Burke's invective against him, that the charges were for errors or mistakes such as good men might fall into, and which might produce very pernicious effects without being, in fact, great offenses; and that a large amount of allowance ought to be made for human infirmity and for human error, and that the crimes charged against Mr. Hastings were not for defects of judgment, or errors common to human frailty which could be allowed for, but were offenses

as Mr. Evarts in said case expressed it, having their roots in avarice, treachery and criminality.

You will also remember that in order for the crime to be impeachable the guilt must be personal guilt.

You must also remember that you are not merely to consider whether or not the charges have been proven, but whether or not he has been proven guilty of an impeachable offense.

The Legislature has no right to discipline by impeachment one of the executive departments. The different departments of governments must do their own disciplining, if any is done; for this the different departments are responsible to the people and not to another department.

The defendant is entitled to presumptions in his favor and to the benefits of doubts, as much so as in cases of ordinary criminal charges.

It follows then, as I contend, even in the severe school claimed by the prosecutors, that in order for you to convict the defendant you must believe, beyond a reasonable doubt, that the said elements enter into, and have been satisfactorily proven to you, as to some one or more of the articles of impeachment.

We say that no more stringent rule against a respondent in any well considered case of impeachment in England from the first, that of Lord Latimer, in 1376, to the last, that of Lord Melville, in 1806, or in the United States, from that of the first, the case against Blount, to that of Belknap, in 1874.

I now proceed to consider specifically the articles of impeachment at bar, and for the purpose of this argument I think the articles to which the demurrers have not been sustained by this court can be more satisfactorily considered under the following divisions:

1. Did the placing on the market of the school lands in Harris and Liberty counties, under section 22 of the act of 1887, as amended, by respondent contain the elements of an impeachable offense?

2. Did the sale of said lands at \$2 per acre contain the elements of an impeachable offense?

3. Was there collusion with David Boaz and others, and did the acts done in pursuance thereof contain the elements of an impeachable offense?

4. Did respondent's acts and conduct in relation to permitting parties to remain in the Land Office after office hours have the necessary impeachable elements?

5. Do the facts *in re* reclassifying the value of the timber on lands in Newton and Jasper counties contain the criminal elements of an impeachable offense?

6. Does the evidence satisfy your minds *in re* attempting to procure a false certificate from William Bramlette, as to map of Liberty county, contain the necessary elements of impeachable matter?

Before I take up these different heads for discussion, I believe it is proper, as throwing some light and explanatory of this case, to refer briefly to the makeup of the General Land Office of the State of Texas.

The land matters of the State of Texas were administered under Mexican law and authority until the 13th day of November, 1835. On the last named date the provisional government of Texas directed all land commissioners to cease their operations, and to deliver all books, papers and documents in their offices to persons appointed to receive them.

Here we have the beginning of the authority of the State of Texas to administer her land matters to a limited degree.

The General Land Office of the State of Texas was established by act of the Republic of Texas, on the 22nd day of December, 1836. The Commissioner was entitled, by virtue of this act, to the custody of all records, books and papers appertaining to the lands of the Republic, in the care and possession of empresarios, political chiefs or any other persons, and these became the books and papers of that office.

By the acts of June 12 and December 14, 1837, all books, records, papers and original documents appertaining to the titles to land denominated archives, became the books and papers of the Land Office. This is the way and the times when the Land Office was founded.

By the joint action of the United States and of the Republic of Texas the latter was admitted as a State into the Federal Union on the 29th day of December, 1845, and the laws of the United States were extended over it at that date. The State government was not organized, however, until the 16th day of February, 1846; the acts of the officers of the Republic prior to the latter date were valid.

Upon the separation of Texas from Mexico, all the vacant domain belonging to that government became the property of Texas and subject to its control. By the annexation resolu-

tions with the United States, Texas retained all its vacant and unappropriated lands, except sea ports, harbors, navy yards and property pertaining to the public defense. In this respect Texas is different to the other States in the Union.

In the other States the public lands belong to and are administered by the United States authority. Of course, in the changes from one government to another vested rights were not disturbed.

From the foundation of the Land Office Department of Texas, as above stated, to the present time, it has been growing in importance, and the duties thereof have been growing more onerous and difficult, until the present time. It is now one of the most difficult branches, or departments, of the government of the State of Texas.

The lands belonging to the State of Texas have continuously been administered by the said Land Office generally. From the first-named date to the present time there has been in all about 42,000,000 acres of land appropriated to the common school fund; and there has been set apart to the University of Texas about 2,250,000 acres of land. At this time there is belonging to the public free schools about 17,000,000 acres of land; to the University of Texas there belong now 1,250,000 acres of land; to the Lunatic Asylum there was appropriated 1,000,000 acres of land; to the Blind Asylum, 1,000,000 acres of land; to the Deaf and Dumb Asylum, 1,000,000 acres of land, and to the Orphan Asylum, 1,000,000 acres of land. There still remains of unappropriated public lands about 4,250,000 acres; therefore, the Commissioner of the General Land Office has to give attention to and administer in his department for said purposes, about, in round numbers, 55,000,000 acres of land; and of this there still remain about 25,000,000 acres of land belonging to the school fund.

The management of said land matters in general is conducted in the Land Office in the city of Austin. In the Land Office, for the purpose of discharging the duties of said Land Office, necessarily it has to be divided into a good many departments; there is the file room, the draft-man department, the patent room, the calculation department, the copying department, the school department, the lease department, and the school department is subdivided into several departments, the classification department and the sales department,

etc. I mention those matters, Mr. President and members of the court, for the purpose of showing the magnitude of the business of the Land Office, and the great difficulties necessarily incident thereto, and that it is necessary to entrust a great deal to others; that it is impossible to give a personal supervision to the details of the office and to the manner in which all the work of the office is done; so that when you go to pass upon what has been done in the Land Office you should not expect the eye of the Commissioner of the Land Office to keep up with the routine work of the office.

Now, with the foregoing matters before us, let us keep in view the necessary elements of an impeachable offense in the most severe school for the respondent, and which rule is asked by the honorable managers to be applied in this case, as well as the rule which respondent invokes at your hands and believes to be the true law of the case, and see whether the acts of respondent come up to the measure of either school. However, permit me to say this much in regard to the old school of impeachment: That this High Court of Impeachment can look to England for laws and precedents; that I am reminded of the Floyd case, one of the early English cases of impeachment. He was a treasurer of the fleet, a Roman Catholic, and dropped some expressions in private conversation, as if he were pleased with the misfortunes of the elector Palatine and his wife. The House of Commons became disgruntled at Floyd and fixed up a degrading punishment for him. The next day a message was received from the King challenging the jurisdiction of the Commons to try the case and told them they had no jurisdictional power and requested them to show precedents to support their claim.

This they were unable to do. The House of Lords requested a conference. The result was the Commons relinquished the claim in favor of the Lords. Floyd was degraded from his quality and condemned to ride from the Fleet to Cheapside on horseback without a saddle, with his face to the horse's tail and the tail in his hand and look pleasant. (See De Solme on the Constitution, 348.) I would like to know if this is a precedent worth anything as going to show what is the present living law of Texas in regard to impeachment?

We now come to the first head of the foregoing classification of the charges against respondent. It is not even

every indictable offense that is an impeachable offense. It is only the higher grade of crime; that which goes to subvert the fundamental principles of government. To illustrate: Here is a pyramid of crime, from the base, treason, to the top, squirrel hunting on Sunday. The law making power of Texas ought to say how high up this pyramid a Court of Impeachment can go to find an impeachable offense, but this has not been done. Until it does, we are without chart or compass in this matter.

First. Did the placing upon the market by the respondent, of the school lands in Harris and Liberty counties, under section 22 of act of 1887, as amended, under the circumstances, contain the elements of an impeachable offense?

Said section 22 is as follows: "The Commissioner of the General Land Office, under the direction of the Governor, may withhold from lease any agricultural lands necessary for the purpose of settlement; or, in his discretion, he may lease such agricultural lands in small quantities for a less period than five years, as the public and the development of the country may seem to require; and no agricultural lands shall be leased, if in the judgment of the Commissioner, they may be in immediate demand for settlement, but such lands shall be held for settlement and sold to actual settlers only, under the provisions of this act; and all sections or fractions of sections in all counties organized prior to the first day of January, 1875, except El Paso, Pecos and Presidio counties, which sections are detached and isolated from other public lands, may be sold to any purchaser, except to a corporation, at not less than two dollars per acre, upon such terms as the Commissioner of the General Land Office may prescribe." The amendments to said section by acts of 1889 and 1891 do not materially affect the case before the court.

Section 4 of said act of 1887 prescribes the manner of classifying the school lands. It is as follows: "It shall be the duty of such State agents as may be appointed under the provisions of this act, under such regulations and instructions as may be prescribed by the Commissioner of the General Land Office, to classify all the lands belonging to the several funds mentioned in this act, as prescribed in section 3, lying in the particular territory to which such agent may be assigned, into agricultural,

pasture and timber lands; and for this purpose they shall carefully examine the same, and after such examination they shall prepare an accurate plat of each section, showing the relative proportions of timber and open land on such section and their situation; also the quality of the soil, the topography of the land, and the quality and kind of the timber, and the streams and other sources of water supply and their location, noting such streams as may be permanent water and such other facts as may be important; and from time to time as may be prescribed by the Commissioner of the General Land Office, such agent shall prepare and forward to the Commissioner with such plats a tabulated statement of all the lands in any particular locality, with the value of each section; and such plats and reports shall be filed in the General Land Office as a part of the records of said office; but nothing in this section contained shall be construed to require a classification of lands already classified under former laws, if such classification is satisfactory to the Commissioner."

The respondent in construing said section 22, believed he had a right to place said lands in Harris and Liberty counties on the market for sale to others than actual settlers, and he believed it to the interest of the State of Texas to so do. The State agent's classification, under said section 4 of said laws, was on file in the General Land Office, showing the valuation of said land and its character, etc. It was all classified as dry grazing land; none of the said lands were classified as agricultural lands. The lands had been on the market for years to actual settlers, and no application, not one, for any of the sections of lands in question, was on file at the time the applications were filed by those to whom they were awarded. You should continually bear in mind the difference between application and award, especially when of different dates.

I do not believe the House of Representatives ever fully understood this matter. The application is sometimes filed days, and weeks, and months before the land is sold to the applicant; or, as the law expresses it, before the land is awarded. Receiving an application and making an award are two very different things; but when the award is made it dates back to the date of the application, for that is the obligation of the applicant. While some of the applications referred to, to buy land, may bear

date prior to the time when the lists were filed with the county clerks, yet no sales were made until after this had been regularly done, and this, as I understand, complies with law. And until the award is made any other person has the right to put in his application and protest against the land being awarded to one whose application is dated prior to the time when the lands were regularly on the market, and if he thinks he has not received his legal rights the courts of the country are open to him to right all wrongs.

Under the laws of 1874 said lands could, upon proper application, be bought for \$1.50 per acre (see acts of 1874, pp. 142-4), and it appears that no actual settler wanted the lands at this price, and they were then, as well as now, situated in that part of the State as populous as any other portion. Under act of 1879, special session (see pp. 23-26), any one of the sections of land in question could be bought for \$1 per acre by an actual settler, upon appraisement by the county surveyor and approval by the commissioners court. The State failed to find an actual settler purchaser, even at this price, which is just one-half what the respondent sold these lands for.

Under acts of 1881, page 119, said lands, if duly appraised and approved as above stated, could be bought for \$1 per acre by actual settlers, and the purchasers have twenty years within which to pay for the land, and any settler had the right to buy as many as seven sections of land, and it does not appear that any settler wanted the said lands even then under that act.

Under act of 1883, page 85, which was the act creating the land board, said lands could be, upon complying with the law, bought for \$2 per acre on thirty years time, with 5 per cent interest, and still under that act the State failed to find a purchaser for these lands, and all that time in that portion of the State there were towns and cities and populous communities, and they were in part within the county of Harris, which for years had more miles of railway than any other county in the State of Texas.

The act of 1885, page 14, did not deprive the actual settler of any right to purchase said lands as given by said act of 1883; and with all these rights in behalf of the actual settler, the State failed to find any actual settler who would pay the price for said lands.

This brings us to the law of 1887,

under which to-day, with some few amendments, the school lands of Texas are being administered, and ever since that year the greater portion of said lands have been on the market for actual settlers at \$2 per acre, the minimum price for which the lands could be sold, and in counties organized and settled about a half century ago. Still there was not a single application by an actual settler on file at the time they were put on the market under section 22, nor at the time that the parties to whom the lands were awarded filed their applications.

There were two gay and festive applicants pretended actual settlers, Mr. Thompson of North Carolina, and Mr. Marshall of Kentucky, who, the evidence shows lives in Houston, Texas, and rooms with Capt. J. W. Davis, in whose large pasture the lands are situated for which they applied, and they each claimed to have slept one night on the section he applied for, and each applied for one section, and the night referred to they slept together. Such actual settlers it appears to me are much better at sleeping than they are agriculture or horticulture, and their applications were filed after awards were made.

The Commissioner concluded that it was time that these lands were being utilized for the use and benefit of the State of Texas; that they ought to be sold so that the school fund might be augmented and the minds of the children of Texas be benefited thereby; that in this way he would assist in training and cultivating the rising generation, and thereby making them better men and women, and thereby bring about a better class of citizenship and consequently, peace, prosperity and happiness to posterity; and for these reasons among others, after carefully considering section 22, he thought he had a right, and that it was the best interest for all the people of Texas, and therefore did place said lands on the market under said section 22 of act of 1887.

The lands could not be sold to actual settlers and were bringing no revenue to the State; when they are sold it is very different. Will not this court, will not the people of Texas, say he was not only faithful to his trust, but acted for the very best interests of the State? I ask you to carefully read section 22 and see if it will not bear the construction placed on it by the respondent. Notice the wording of the title to the act (see sections 21 and 22); and when we remember it is proper to look to the whole act for the

construction of any one section thereof, I think you will conclude that at least section 22 can be construed as respondent construed same, without being corrupt or guilty of any wilful wrong. To illustrate the principle that penal laws shall not be enforced in reference to an intent governed by a claim of right, I submit to you the case of the poacher who had set his traps on the premises of a lord of a manor, and had caught a pheasant; the gamekeeper takes possession of the trap and pheasant. The poacher by violence takes the trap and dead pheasant. He was arrested and tried.

Vaughan Bacon says: "If the prisoner demanded the wires under the honest conviction that he had a right to them, though he may be liable for trespass in setting them, it is not robbery. The gamester had a right to take them, and when so taken they never could have been recovered from him by the prisoner. Yet, still, if the prisoner acted under the honest belief that the property in them continued in himself, I think it is not robbery." In the kind of a case at bar, where there is punishment of a very severe kind to be inflicted, if respondent is found guilty, we must draw the distinction, and discriminate between *technical* and *actual* faults. When we do this we carry out that doctrine in the pheasant case; we practice the fundamental principles of our liberty.

1. As a precedent for selling to others than actual settlers, under section 22, I refer you to the records of the school land depart of the General Land Office, which are in evidence, and they show that during the administration of Hon. R. M. Hall this was the rule of the office as to counties organized prior to 1875. The testimony of Randolph Lawrence, who was chief clerk in the school land department under Commissioner Hall, and that of Ben F. Hughes shows that it was the practice in all counties of the State, except El Paso, Pecos and Presidio, which were organized prior to January 1st, 1875, where the lands were not agricultural lands, to sell to anyone except a corporation, without regard to applicant being an actual settler, and regardless of whether the lands were contiguous to other school lands. There had been about eighty counties put on the market by Mr. Hall under section 22 of act of 1887, and respondent had these precedents before him, and there had not been any complaint by the Legislature or Attorney-General as to these sales, and the respondent had a right to give these prece-

dents great consideration after they became known to him.

I am of the opinion that it can be very reasonably suggested that the Legislature of Texas has passed so many laws for the past few years in regard to these school lands that it is a little difficult, even for the lawyers, to know what the law is.

2. Did the sale of said lands at \$2 per acre contain the elements of an impeachable offense? I ask you to remember how long these lands could have been bought by actual settlers, and the prices and terms on which they might have been purchased. When the lands are regularly classified, price fixed and land put on the market, the Commissioner will not change the price upon every application. If he has the power to do this, he does what he thinks for the interest of the school fund. What difference does it make to the school fund whether an actual settler or some one else buys the land? It is to the interest of the school fund for the land to be sold and let the value thereof begin to draw interest for the use and benefit of that fund.

The respondent had a regular classification of all these lands in the General Land Office. He knew of no reason why they should be reclassified; he had no money for the purpose of reclassifying these lands; the lands were on the market at \$2 per acre, classified at that price by a regular State agent, and during the time of his predecessor in office, Hon. R. M. Hall; and he thought it to the interest of the school fund to sell, and did so. There was a little boom about the time most of these lands were sold, but the Commissioner knew nothing of it; but even if he had, likely it was a good business transaction to sell; it usually is a good time to sell when there is a boom. Very likely in a year or two, when the boom is gone, the owners of the land, or some of them, will want to rue the bargain.

They will be about like Pat was. Mike and Pat had just arrived in this country, and it was before they had got into office, and you know they had not been here long. They were traveling through the country one day, and they saw a squirrel run into a hollow in a stump and Pat ran up very promptly to the stump, about the same gait that one of these purchasers would run onto one of the sections of land in Harris county, and he put his hand into the hollow and grabbed the squirrel, like the land grabber; he made an awful face. Says Mike:

"And have you him?" and Pat replies: "No; faith he has me." Some of the holders of these lands will be in Pat's condition. Wait until the boom is over, and the rains descend, and that country is covered with water, and see.

As to what was said by respondent that Sunday morning when on his way to church, to Messrs. Roach and Baylor, the following is submitted as a reasonable explanation of that matter, and giving parties credit for sincerity:

As you will remember, the conversation was hurried somewhat and a running conversation in regard to these charges being made against respondent. The question of the clerks in the Land Office buying lands, and the sale of the Liberty and Harris county lands were all discussed, and when respondent said what he did in regard to canceling sales Roach and Baylor thought he referred to the Liberty county lands, when he had reference to the land bought by the clerks, if any. A very reasonable explanation, I think. He investigated next morning and found that the clerks had bought no land.

3. Was there collusion with David Boaz and others, and acts done in pursuance thereof which contain the elements of an impeachable offense?

It is claimed that such is the case because some parties found out so soon that the lands were on the market. When the school lands are put on the market they are put on for the purpose of selling by the State; that is the reason of the lands being put on the market, and the sooner the lands are sold the better for the school fund, because they begin to bear interest, and the better for the State because they begin to bear their part of the taxes.

And when the Commissioner can give information that will benefit the trust he represents, is it not his duty to do so? Ought he not to subserve the best interest of the school fund? He gave information to all alike who asked. Now, the party who inspires this complaint, I don't think he wanted the lands for a home. No man who desired to be an actual settler I think has made any complaint of this kind. Likely this is merely an excuse for finding fault with the Commissioner and trying to wing him politically.

Like the party went out turkey hunting when he was cursing himself for not getting the turkey. He saw a great big fat gobbler

strutting a long ways off and he concluded he would slip up in shooting distance, and he crept up within range and pulled down his ancient rifle and drew a fine bead and fired, but just as he pulled trigger "old Betsy" wobbled and he broke the turkey's wing. He concluded he would catch him; he laid down his gun and took after him; he ran him about a mile, and the gobbler started up a long slant and the hunter concluded to give up the chase; he stopped, had to give it up, and said: "Well, you may go, but I hope I have got you so that you will roost low in the future, and that is all I wanted." The old gobbler's wing soon got well and he was flying as high as ever.

There is, necessarily, a great deal done in the different departments of the Land Office, the details of which can not be looked after by the Commissioner in person, and has to be entrusted to the clerks; yet, he does not ask to be shielded from responsibility on that account; as to the charges made in the articles of impeachment, he assumes all the responsibility and courts investigation as to all his official acts, either those done in person or those done by his clerks. If there is a misconstruction of the law, he desires to find it out and be governed by the proper construction, as much as any member of this court.

4. Did respondent's acts and conduct in relation to permitting parties to remain in the Land Office, after office hours, have the necessary impeachable elements? Mr. Schmidt was permitted to remain there for two reasons, namely: first, so that he could do his work and not interfere with the clerks in the office in their work, as they were using the books during office hours, from which he desired copies, and the Commissioner did not have the clerks to do the work desired; and second, because the Commissioner believed it to be to the interest of the State to have the copies made, as he thought that in this way he would get rental for the State on a great deal of land, which was not paying the State anything.

As to Williams, this was done for the benefit of Hall county, one of the newly organized counties in the Panhandle. The county desired the field notes of land situated in that county, and the Land Office, with the force it had, could not do the work, and contract was made with Williams to do the work, and in order to comply with the wishes of Hall county through her commissioners, he was permitted to

remain after office hours in one part of the building and get up said field notes. Neither party ever went up stairs in the Land Office where the files of papers and file room are; in fact, that was locked every afternoon, when the office was closed, with combination lock, and none of the parties there knew the combination.

And, again, the parties were there with the night watchman, whose duty it was to remain at the Land Office from the moment the office was closed in the afternoon until next morning when it was opened, and he was instructed to let these parties remain, each in a certain room, and do the particular work they had in hand and which was definitely understood. That charge bears on its face evidence of littleness and enmity. The author of it, or rather the party who inspired it, is to politics as boarding house gossip is to society—one of those little, mean delightful things. Some men are as are as jealous and eager to raise a fuss as some women are to go to a wedding—the former on account of some imaginary wrong received or for hope of benefit or for mere cussedness, the latter to see another man brought to subjugation.

5. Do the facts *in re* reclassifying the value of the timber on lands in Newton and Jasper counties contain the criminal elements of an impeachable offense?

Mr. E. I. Kellie, formerly State surveyor and at present county surveyor of Jasper county, made most of the reports upon which the said reclassifications were made; he is a gentleman who has lived there in that county for a long time and is well and favorably known, and has always, so far as the evidence shows, been found honest and competent and perfectly reliable. It is submitted that the Commissioner was justified, perfectly, in relying on reports from him, and it is not even attempted to show that his reports are not perfectly correct. Not a single witness is even introduced to contradict his reports. Some of the timber was decaying and some of it was being destroyed by worms, and the surrounding timbers on other lands were being all cut down, and there was danger of the tramways being moved away; and as a business proposition it was submitted to the Commissioner what was best to be done, and he concluded that the best interests of the people of Texas demanded that the timber be reclassified and sold, and he gave his trust his best judgment in this matter and sold the timber, as he

believed he had a right, and it was his duty to do so.

6. Does the evidence satisfy your minds that the acts of respondent *in re* attempting to procure a false certificate from William Bramlette, as to map of Liberty county, contain the necessary elements of impeachable matter?

L. S. Ross, Jr., testified that he wrote the certificate, which was taken by John McGaughey for the purpose of being taken to Mr. Bramlette to sign as chief clerk, and that he copied the same from another certificate which he had prepared for the Commissioner to sign; that one was a copy of the other, and that the one produced in court and signed by the Commissioner was the first written and that the other one was copied from it.

John McGaughey testified that the certificate and map prepared by said Ross was the identical map which he took to Mr. Bramlette, and was the one he refused to sign. The respondent never saw the certificate which Mr. Bramlette refused to sign, and had nothing to do with the kind of certificate that should accompany the map, and knows nothing of it being presented to Mr. Bramlette until some time after it was presented; therefore no guilt could attach to him in the matter, even if there had been any guilt.

Now when we recollect the purpose of the certificate, and that it was asked for by Mr. Townsend, a member of the Legislature, that it was made as he desired it, and that there was nothing secret about this, nor in any of the other official acts of the respondent, and that the map on its face, on which the certificate was written, showed the situation of the school lands, it is but reasonable that Mr. Bramlette, and those acting with him, were mistaken; and I am willing to give the charitable opinion that it was a mistake on their part as to the wording of the certificate, otherwise they would be guilty of a great wrong indeed, one of the greatest, wanting in gratitude, to say the least of it, and here I am reminded of a portion of Shakespeare's Hamlet, which, if some of respondent's official family has attempted to assassinate his good name, I think is applicable; the only difference, one is to take life, the other good name.

King—No place, indeed, should murder sanctuarize;
Revenge should have no bounds. But, good Laertes,
Will you do this? Keep close within your chamber:

Hamlet, returned, shall know you are come home:
We'll put on those shall praise your excellence.

And set a double varnish on the fame
The Frenchman gave you; bring you, in fine,
together.

And wager o'er your heads: he, being remiss,
Most generous and free from all contriving,
Will not peruse the foils, so that, with ease,
Or with a little shuffling you may choose
A sword unbated, and, in a pass of practice,
Require him for your father.

Laertes—I will do't: and for the purpose
anoint my sword.

I bought an unction of a mountebank,
So mortal, that but dip a knife in it,
Where it draws blood no cataplasm so rare,
Collected from all simples that have virtue
Under the moon, can save the thing from death,

That is but scratched withal: I'll touch my point

With this contagion; that, if I gall him
slightly,

It may be death.

King—Let's further think of this:

Weight, what convenience, both of time and means,

May fit us to our shape: If this should fail,
And that our drift look through our bad performance,

'Twere better not assayed: therefore this project

Should have a back, or second, that might hold

If this should blast in proof. Soft;—let me see:—

We'll make a solemn wager on your cunning,

I ha't: When in your motion you are hot and dry,

(As make your bouts more violent to that end)

And that he calls for drink, I'll have prepared for him

A chalice for the nonce; whereon but sipping,

If he by chance escape your venom'd stuck
Our purpose may hold there.

The respondent's reputation, and of his family is as dear to him as life itself.

Who steals my purse steals trash; 'tis something, nothing;

'Twas mine, 'tis his, and has been slave to thousands;

But he that filches from me my good name
Robs me of that which not enriches him,
And makes me poor indeed.

May it please the court, we respectfully submit that the honorable managers in this case have failed to show any moral turpitude, or fraud, or even willful wrong on the part of respondent, much less any crime, in connection with any of the articles of impeachment. On the other hand, the evidence is convincing that he has been as faithful to the trust reposed in him by the people of Texas, as he was faithful, brave and gallant for four long years, from 1861 to 1865, when he was fighting for his native land and beloved country.

In conclusion, may it please this High Court of Impeachment, we submit the case fully explained. It is true you can not retrieve the respondent from the misery caused by these articles of

impeachment being preferred against him, but he has been supported all through this trial by a feeling of conscious innocence, in the full confidence that a judgment of acquittal by his jurors will restore him to his family, to friends and his country.

Hon. T. C. Wynne, for the State, submitted the following:

To the Honorable Court of Impeachment:

I shall not attempt to discuss at length the propositions of law raised in this case, but will be content with the discussions already made by my co-counsels, and will only state what I conceive to be the law without going into details of the reasons or authorities bearing upon them.

The first proposition of law involved in this proceeding, and one which has been sustained by the majority of the Court, is: That our constitutional provisions governing an impeachment proceeding are self-executing, and that it is not necessary in order to make the Constitution operative that there should be a legislative enactment better defining impeachment offenses and to more specifically define the mode of procedure.

That the foregoing propositions are true seems to be founded in soundest reason and upon the great weight of authority. We contend that the right of impeachment is an inherent right of the people.

That under our peculiar forms of political institutions, the power of the creation or abolition of an office, that the limitation or extension of the duties of an officer rest in the people, and this will not be denied by any one. That if it be true, that the power to create or abolish an office, or to extend or limit its duties be lodged in the people of a State, then upon sound reason we believe that the people, who have created an office and defined the duties of its officer, have the power to remove such officer when he is not properly discharging the functions of such office. Again, the right to hold an office in this State is a right received at the hands of the people, and when they are convinced that the duties of that office are not being performed by such officer with efficiency, skill and honesty, then we think that the power which gave such right is sufficient to take it away; that the power which commissions such officer is able to cancel such commission.

If these propositions be not true, then upon the election of an officer such officer becomes the custodian of

the liberty, the lives and the property of the people who elected him, in so far as the duties of his office extend, and the only poor pittance left to such people is the selection of his successor.

The second proposition which we maintain is that an impeachable offense need not necessarily be a criminal offense.

That this has almost uniformly been held to be the law, I refer you to the arguments heretofore made. That this should be peculiarly true under our forms of government, I submit that the object of an impeachment proceeding is now confined to removal from office and disqualification from holding office, and that our Constitution specially provides that an officer who may be impeached shall be subject to the penal laws of the State. Under the laws of England, when impeachment proceedings were first instituted, they took cognizance not only of the conduct of an officer in his official capacity, but they also tried the respondent for any such criminal offenses as he might be guilty of, hence the opinion maintained by a few law writers that it is a criminal proceeding.

The purpose and object of a court of impeachment have undergone many changes since its inception, and now, under the laws of the United States, and each of the several States, it no longer retains its character as a criminal proceeding, and can no longer punish for crime, but it remains a court through which the people can speak, in order to rebuke an officer who may be derelict in his duties of office. Why create a great court, giving it extensive powers, and being in its very nature expensive and cumbersome, when the ordinary judicial tribunals could take cognizance of and punish the same officers? Why not wipe out our Constitution providing for such a court, and pass a legislative enactment, that upon the conviction of an officer for certain defined crimes, that such conviction should work forfeiture of his office and render him incapable of ever after holding office?

It has been urged that this is a criminal court, and therefore, before a respondent can be convicted, he must have alleged against him some offense known, designated and defined under our penal code. We answer that it is no more a criminal proceeding than is a court-martial trial, and that the weight of authority has designated it as political procedure rather than as criminal, and that we look to the laws of England for our precedents as we

do for our common law precedents. I further submit that a legislative enactment such as is found in the code of criminal procedure can not nullify and render void a constitutional provision which has provided for such a court, and defined its mode of procedure.

It has been further urged that an officer can not be held to answer for any acts done prior to his last election, and this contention has been sustained by a majority of the court.

In the foregoing proposition I disagree with the court for the reason that our Supreme Court has decided that under the statute which says that no county or district officer shall be held to answer for any act of omission or commission in his former term of office; that such statute only intended to embrace such acts as were condoned by the second election of such officer. Now, when our Supreme Court should construe the plain letter of the law in such a way, then, in the absence of such statute, I maintain that the officer is responsible for all acts done while in such office; but even if this proposition cannot be maintained then I take it that such officer who would seek to hide behind such a defense must allege and prove that the acts of his former term were known in order that they be condoned.

I wish to present one other observation, and then I will state the facts as I understand them, and that other observation is as the purpose and scope of an impeachment proceeding. We believe that the purpose of an impeachment proceeding is to inquire into the conduct of certain officers in our State, and to determine whether such officers are faithfully, fairly, efficiently, diligently and honestly performing the duties of their offices.

That such inquiry has wisely been provided for by articles of impeachment filed by the people of this State through its House of Representatives, and through their Senate the people pronounce their verdict as to the faithfulness, efficiency and honesty of their officers. That any act of misfeasance, malfeasance or nonfeasance, any act of omission or commission, any mistake of law or facts, any abuse of discretionary power, ignorance of the duties of office, or any other act in and about such office which is not warranted by law, is a proper matter for investigation, having in view the one main purpose, and that is, do all the facts and evidence taken as a whole show that the rights

of the people of this State have suffered, and will suffer if such officer is permitted to remain in office.

That the articles of impeachment subserve the purpose only of notifying the respondent upon what points he may expect to produce evidence to meet the charges, and that no one or more of them need necessarily be grounds for a judgment of impeachment, but that if upon the whole the court is convinced that it is dangerous and unwise to permit such officer to enjoy his office, then it is their duty to remove him.

The articles of impeachment against the respondent, upon which demurrers have not been sustained, charge him with the following acts and official misconduct:

Articles 1, 3, 9, 11 charge that respondent, unmindful of the duties of his office, and in violation of his oath of office, did unlawfully, knowingly and in violation of the law, sell certain sections of school land in Harris and Liberty counties to other than actual settlers.

Articles 2, 4, 10 and 12: That respondent, unmindful of the duties of his office and in violation of his oath, did unlawfully, in violation of the laws, sell certain lands in Harris and Liberty counties as isolated and detached lands, when, in truth and in fact, such lands were not isolated and detached.

Article 6 charges that respondent unlawfully and in violation of his oath of office, made certain changes in the classification of certain lands in Harris county, and that respondent placed these lands upon the market and sold them before such clerk had received such notice of any change and before any of the citizens of that county had time in which to file their application to purchase.

Article 7 charges that the respondent, unmindful of the high duties of his office and in violation of his oath, did unlawfully and corruptly collude with David Boaz, E. R. McLean, F. M. Beatty, S. DeCordova, T. F. Taylor and others for the unlawful purpose of enabling and permitting the persons named to purchase certain school lands in Harris county and to give these purchasers an unfair advantage in the purchase of these lands over other citizens, and especially the citizens of Harris county.

Article 13 charges that respondent sold certain lands in Liberty county at \$2.00 per acre, when such lands were worth much more than this price, and that respondent knew such lands

were worth much more than this amount, or could have known it by inquiry.

Article 15 charges the respondent with unlawfully and corruptly colluding with David Boaz and E. Freidenhaus and others for the unlawful purpose of enabling and permitting these persons to purchase certain school lands in Liberty county, and to give such purchasers an unfair advantage in the purchase of these lands over other citizens, and especially the citizens of Liberty county.

Article 17 charges the respondent with having violated a plain statute in permitting certain persons to remain in the Land Office after office hours, and to have access to the public records of that office without such persons being in the charge and under the direction of a clerk or officer of that office.

Articles 21 and 22 charge the respondent with unlawfully and improperly cancelling the valuation heretofore placed upon certain timbered lands in Jasper and Newton counties, and improperly and in violation of the law, repriced and revalued such lands upon the unsworn statement of E. I. Kellie, who was not employed by the State as its agent, but as the agent of the party wishing to buy, and who did buy the timber on these lands after its reduction in price.

Article 25 charges respondent with having attempted to procure from Wm. Bramlette, chief clerk of the Land Office, a false certificate in writing.

Now, if our construction as to the purpose and scope of an impeachment proceeding be correct, then the question is, under the evidence as a whole adduced in the trial of this cause, under the articles of impeachment here filed, has the respondent been guilty of such official misconduct or ignorance of law or facts, or of such abuse of power or discretion or absence of skill as such officer, as that the people of this State have suffered from his official acts?

If such conclusion be correct, then under the law applicable in this trial, will the facts as developed warrant this court in removing respondent from office?

The facts show that on the 8th day of November, A. D. 1892, respondent, W. L. McGaughey, was elected to the office of Commissioner of the General Land Office, and that after such election, on or about the 16th day of December, of the year 1892, the respondent, acting as such Commissioner, sold

certain public free school lands in Harris county, and on or about the 23d of January, 1893, he sold certain public free school lands in Liberty county as isolated and detached lands to others than actual settlers. That these lands were divided into sections of 640 acres, and were contiguous to each other and formed two blocks of about thirty and forty sections respectively. That the block of about thirty sections of Liberty county was a part of a large block of surveys in number about one hundred and thirty, which lay in Liberty, Jefferson and Chambers counties, and that all of these one hundred and thirty sections, out of which the respondent sold these sections lying in Liberty, formed one continuous block, and that these surveys were contiguous to each other.

The acts of 1889, section 22, being an act to regulate the sale and lease of the public free school lands, and which amended a similar act of 1887, reads as follows:

"The Commissioner of the General Land Office, under the direction of the Governor, may withhold from lease any agricultural lands necessary for purposes of settlement, and no agricultural lands shall be leased if, in the judgment of the Commissioner, they may be in immediate demand for settlement, but such lands may be held for settlement and sold to actual settlers only under the provisions of this act; and all sections or fractions of sections in all counties organized prior to the first day of the year of January, 1875, except El Paso, Pecos and Presidio counties, which sections are detached and isolated from other public lands, may be sold to any purchaser, except to a corporation, without actual settlement, at not less than \$2 per acre, upon such terms as the Commissioner of the General Land Office may prescribe."

And this is the act upon which these sales not requiring settlement were made. In order that we may arrive at a reasonable and proper construction of the statute just quoted, I submit that there obtained, up to the date of the first enactment of the above statute, two views as to the policy which should be pursued by the State in the sale of all lands held in trust for the several public institutions. The one, that the State, holding such land in trust for these public institutions, should sell these lands to whomsoever wished them, so long as that such sale be made on such terms as would result beneficially to the institutions owning them.

The other opinion was that these several institutions having received these lands as a donation from the State, and such lands necessarily being left to the control of the State, through the Legislature, and these public institutions being a part of the State government, and depending upon the State for its support, that it was not only a power left to the Legislature, acting for the State, to control and manage these lands as it thought best, but it was the duty of the Legislature to pursue the same policy in the sale and disposition of these lands as they had pursued in the sale and disposition of its own lands.

Under the first of these two policies was the act of 1881, which act did not require settlement, and placed the minimum price of the school lands at one dollar per acre. It was under this act that immense landed estates were acquired by individuals and by corporations, which was soon looked upon as a menace to a proper settlement of this State. So at the first regular meeting of the Legislature after the act of 1881 had gone into effect, that Legislature passed an act repealing the law of 1881, and providing that when any school or other public lands were classed as suitable for agriculture, such lands so classified should only be sold to actual settlers. After a trial of this law for four years the Legislature of 1887, believing that lands which were suitable for agricultural purposes were being classed as dry grazing lands, and they were therefore being sold to anyone without requiring settlement, repealed the law of 1883 and enacted the law under which the lands in Harris and Liberty counties were sold by this respondent.

The act of 1887, as amended in 1889 and 1891, contemplates the actual settlement of all public lands, whether agricultural or dry grazing, and in no instance is there an exception to this rule save and except as provided for in section 22 of that act.

Again, our Constitution has uniformly made ample provision for all persons who wish to acquire a home in this State.

It has even gone to the extent of giving a preference to actual settlers upon lands which have been surveyed off and given to the respective counties in this State for school purposes.

I submit the further consideration that the lease of public lands in this State had its birth in the policy that these lands were to be sold only to actual settlers, and that the system of leasing lands was for the purpose only

of receiving a reasonable revenue from these lands until they were needed for settlement. And in pursuance of this policy, the act of 1885, which first inaugurated the lease system, would only permit a lease to be made subject to sale.

That under the law of 1887, which was more exacting as to the occupancy of land, they also provided for an absolute lease for a certain period. Under this act of 1887 as amended in 1889 and 1891, it was a condition precedent that a purchaser of any school land should actually settle upon the same; that this being true, hence the necessity of providing an absolute lease in order that all the school lands could be utilized, and bring a revenue.

I submit one further fact in order that we may properly construe section 22, and that is that there are millions of acres of school lands in those counties organized since 1875, which are absolutely worthless for any other purpose than grazing, and which will probably never be worth anything for any other purpose, and under the law of 1887 these lands can not be sold to any other than an actual settler.

In the light of all these facts, and in order that we may not do violence to the language employed, and that we may be in accord with common reason, I submit that the Legislature of 1887 meant to say in the section now under consideration, that in all counties except El Paso, Pecos and Presidio, which were organized prior to 1875, and in which were located isolated and detached sections of school land, that such sections should be sold to anyone except a corporation and that such purchasers would not be required to settle upon same.

Why such a section in an act that requires settlement even in the most arid districts of Texas? It was for the reason that in many of the older counties, those organized before 1875, there was land in small quantities, which was isolated and detached from other public lands, and which were unfit for settlement, land which could only be utilized by some pasture owner. That this is a proper construction is further supported by the fact that this respondent so held.

The evidence shows that this respondent had uniformly held that these lands were not subject to sale to anyone except to an actual settler, and that numerous applications not requiring settlement had been made to buy these lands and that they had all been refused upon the ground that they were not isolated and detached

sections, and this ruling had been adhered to up to the date upon which same were placed upon the market in Harris county.

Respondent offers in justification of his ruling, "that the blocks of school land in Harris and Liberty counties could be sold as isolated detached lands, and therefore to others than actual settlers," that his predecessor, R. M. Hall, had so ruled.

The facts developed that a few sections of land in counties organized prior to 1875 were sold by R. M. Hall as Commissioner as isolated and detached, which were not detached lands, but that the ruling of his predecessor, R. M. Hall, was that such lands could not be sold to others than actual settlers unless they were detached and isolated, and that up to the date of the said Hall's retirement from office that there had been but few applications to buy these lands and but little attention had been paid to this statute.

But for the purpose of this argument, concede that Hall did so rule, is this a justification for a plain and palpable violation of the statutes by this respondent? And in view of the fact that this respondent had uniformly ruled differently up to this very sale; and in view of the further fact, that the evidence develops that this respondent announced upon assuming the duties of his office, that he did not expect to run this office as his predecessor had, is it not now in bad taste for respondent to attempt to hide himself behind such a precedent, and is not such a defense merely a subterfuge?

The facts develop that at the date of these sales of lands, all land in Harris and Liberty counties, they had materially enhanced in value, and that these sections which were sold by this respondent at \$2.00, were worth from \$3.00 to \$5.00 per acre. That an increase in the value of these lands was a matter well known to all the citizens of these counties, and in fact, it was of such notoriety that people were coming from all parts of the State to purchase land in this section of the country.

If these facts be true, and if the Commissioner of the General Land Office stands a representative of the whole people of this State, to manage their landed interest for them then I submit that a material increase in the value of these lands should have been known to him, and that it becomes his duty to regulate the price of these lands in accordance with their real

value and the price which they would bring. And in his failure or refusal to do so, he has violated the trust reposed in him, and has been negligent of the interest of his constituency.

The statute of 1887, under which this respondent sold these lands, provides in section 6 that "It shall be the duty of the Commissioner of the General Land Office to notify in writing the county clerk of each county of the valuation fixed upon each section of land in his county, and in each county attached to it for judicial purposes, which he offers for sale, which notification shall be kept by the clerk in his office and recorded in a well bound book, which shall be opened to public inspection."

The evidence develops that under the foregoing statute this respondent did not give the clerk of Harris county notice of having changed this land from lands upon which settlement was required to land upon which settlement was not required by a purchaser, and that before any notice whatever had been sent to this clerk, that this respondent had sold lands to others than actual settlers, and at that very time the clerk of Harris county had such lands listed upon his book as requiring settlement.

And that it becomes the duty of the Commissioner of the General Land Office to always notify these several county clerks of any change. The purpose and object of this clause is apparent. It is in order that the people in each county may have a record upon which they can know what public lands in their county are held for sale, and upon what terms and at what price, and in order that they can make out and prepare an application of purchase or lease of such land without going to the General Land Office, or else applying through a land agency here in Austin.

I submit that the respondent has not complied either with the letter or spirit of this statute. A notice given the clerk of Harris county, which was received on the 16th day of December, of a change in the manner of the sale of lands in Harris county is certainly an idle ceremony and mere mockery when the land about which the change has been made was sold in Austin on the very day such notice was received in Houston; that upon the very date upon which the clerk of Harris county had received respondent's notice of the change that respondent sold a large per cent of all the sections remaining; that the citi-

zens of Harris county who may have wished to buy, not as actual settlers, had no opportunity to so purchase.

I submit that the purpose of the foregoing statute is that a record of all lands in each of the several counties, the manner of their sale and their price should be kept by the several county clerks of their counties, and that this respondent has been recreant to his duties and the trust imposed in him in not having made this notice as directed by law.

Now as to the articles charging collusion with David Boaz and others, for the purpose of giving them an unfair advantage in the purchase of certain lands:

The evidence develops that respondent had repeatedly had applications to purchase these lands in Harris and Liberty counties by other than actual settlers.

That in pursuance of a ruling of respondent, upon his induction into office, he refused to award the lands upon any other application than that of an actual settler. That he had always assigned as his reasons for refusing these applications the fact that the lands were attached and could not be sold under section 22 of the act of 1887.

That just prior to the date of the order of respondent, placing all the lands in Harris county on the market to any one who wished to buy, that the respondent had sold sections of land not isolated and detached, to others than actual settlers.

That just prior to the date of the order of respondent placing all lands in Liberty county on the market to anyone who wished to buy, the respondent had sold sections of land not isolated and detached to A. Swartz, P. J. Lawless and H. M. Carter, who were not actual settlers. That upon the respective dates on which respondent placed all lands in these counties subject to sale to anyone, and before the county clerks of these counties were so notified, respondent sold the greater part of these lands to David Boaz, C. H. Dillon, S. D. DeCordova, T. F. Taylor, T. M. Beatty, E. Friedenhouse and others. That upon the day before the county clerk of Harris county received respondent's notice of a change in the classification of the school lands of his county, one S. D. DeCordova, who lives in Austin, came into the office of the county clerk of Harris county and inquired of such clerk if he had received this notice, and upon being answered in the negative, DeCordova remarked that he would

probably receive such notice on tomorrow, and that the clerk did receive the notice on the succeeding day. That DeCordova, when informed of the receipt of this notice by the county clerk of Harris county, asked such clerk to file and record the notice and to acknowledge its receipt by telegram, and this the clerk did.

That upon the date of the filing of an order by respondent placing all lands of Liberty county upon the market, that one E. Friedenhouse, who lives in Austin, came into the office of the county clerk of Liberty county and called upon the clerk for an examination of the order, and when same had been filed and recorded, and at the instance of Friedenhouse, the county clerk of Liberty county acknowledged receipt of this notice by telegram. That respondent had repeatedly been solicited by land agents to place these lands upon the market to others than actual settlers, which he had heretofore refused to do; that just prior to the time the lands of Harris county were placed upon the market one David Boaz came into the sales department of school lands and presented his application to purchase, and upon its being refused he (Boaz) and sales clerk went to respondent; that respondent stated that he believed he could sell these lands under section 22, that is, not requiring settlement; that the sales clerk and the chief clerk of the school land department disagreed with the respondent; that in a short time the respondent ordered the sales to be made under section 22.

That at the time the lands of Liberty county were placed upon the market under section 22, David Boaz came into the office and complained of the action of the Commissioner at not giving him notice of the sales of land in Harris county which had been placed upon the market under section 22, and that the lands of Liberty county should be placed upon the market under section 22; thereupon respondent inquired: "Do you wish to buy any of these lands, Tuck?"

Boaz answered that he did, and had the application in his pocket. Respondent turned to his clerks and ordered them to place the lands on the market under section 22. That all of these lands were sold within a few days of the time they were put upon the market under section 22. That the applications of Boaz for purchase of these lands were filed before notice was given to the county clerk of Lib-

erty county, and awards were made to him on the same day that notice of a change in the ruling was received by county clerk of Liberty county.

That since the sales of these lands in Liberty county, there have been applications made to buy like lands and a part of the same block, which lands lie in Jefferson and Chambers counties, which applications have been refused on the grounds that these lands were not detached and isolated.

These last applications were made largely by parties who live in Jefferson and Chambers counties. That these lands were sold at the minimum price, and that they were worth more than this amount.

Under the facts bearing upon this point we submit that the respondent did not act in good faith to the people of this State, and that he gave certain rights to these persons named, and that he refused the same rights to other citizens. That his change in ruling came about, not for the reason that the State would be benefited, but in order that his friends should receive a bounty at the expense of the State. We take it that it is a fair deduction from the evidence that respondent knew that these sales were illegal, for the reason that he was so advised by his attorney, W. K. Baylor, and that he had himself always heretofore ruled that way; and from the fact that except when these particular persons were seeking to buy, he even ruled after these sales that he would not sell similar lands in this manner.

Upon the charge of repricing and revaluation of certain timbered lands in Jasper and Newton counties, the evidence shows:

That E. I. Kellie, who had formerly been a regular State classifier of public lands and who was at that time in the employment of the Cow Creek Tram Company and the Beaumont Lumber Company, made statements to this respondent in which he claimed that the classification now on file in the Land Office of the timber on certain lands placed the price of timber too high, and submitted a very material reduction in the price of the timber on about nine sections of these lands; that upon this unsworn statement of Kellie, and without further investigation, this respondent repriced this timber as suggested by Kellie and upon the same day sold such timber at such a reduced price to those companies for whom Kellie was working, and at the time a reduction

was made by respondent of the price upon this timber; that respondent knew that Kellie was the paid employe of the purchasers of this timber; that the reduction by reason of the repricing of these lands amounted to about \$14,800.

Under the classification and sale of public land, and the statutes and laws governing same, such classification can only be made by some agent duly appointed, and this the records of the Land Office show had been done, and this official classification and price for these timbered lands were, at the time of this repricing, on file in the Land Office.

The respondent disregarded these classifications, and without authority accepted a price far below the official classification price, and this upon the unsworn statement of an employe of the purchaser. No evidence was produced to show that this repricing was fair and correct, nor was it pretended that this respondent acquainted himself with the facts as to the necessity of a reduction in the price of these timbered lands; on the contrary, it affirmatively appeared that he was acquainted with their value, and in the absence of any law which would permit the respondent to accept any such classification, and in the absence of any knowledge on the part of respondent as to the value of this timber, and upon an unsworn statement of an employe of the purchaser, we take it that, had this respondent been mindful of his duties of office and faithful to the trust imposed in him, and had he not recklessly disregarded his oath of office, he would have refused to sell such timber at a valuation much below that which had heretofore been placed upon such timber, and which, so far as we know, save and except the unsworn statement of an interested party, was the true and real value of same.

Upon the article charging respondent with having permitted certain parties to remain in the office after office hours without being in charge of a clerk, the evidence as to whether this violation of law occurred before or after the last election was conflicting, and it is left to the court to say whether or not this violation of a plain statutory law was eliminated from the trial of this case by the deadly blow of a demurrer. However, the witness, David Crockett, testified that the violation occurred since the last election.

If the court was of the opinion that the evidence sustaining this article, and these parties, without authority of

law, and in open violation of the statutes, were permitted by respondent to remain in the Land Office after office hours, it is only another evidence of a disregard of the statutes and laws made for the government of this office.

Upon the last article the evidence established that respondent, about thirty minutes before William Bramlette was presented with a false certificate by respondent's son, John McGaughey, spoke to Bramlette, the chief clerk, and stated to him that a member of the House of Representatives wished a certified map of Liberty county, and that his son John would present such map for authentication by him (Bramlette). That John McGaughey did present Bramlette with such map, with a false certificate upon it, to be signed and authenticated. That upon the refusal of Bramlette to sign such false certificate, it was taken away and destroyed by John McGaughey, and that a different certificate upon a similar map was presented to respondent, and by him signed and authenticated as Commissioner of the Land Office. The evidence is clear that the certificate presented to Bramlette was false, and that this map and certificate was destroyed, and that without mutilating this certificate, except by erasing probably three words, this same map and certificate could have been authenticated by respondent. That the authentication of respondent was just such authentication as Bramlette stated could be made, and wholly different from the one presented to Bramlette.

That such certificate as Bramlette refused to sign was known to respondent to be false, appears from the fact that respondent had been asked to have such certificate made, and that such certificate was made upon the suggestion of respondent and from the further fact that respondent stated to Bramlette who would present to him the certificate for authentication.

Had the false certificate presented to Bramlette been true then this respondent would have been guilty of no violation of the law in the sale of lands in Harris and Liberty, and it could have been used in the discussion of the articles of impeachment before the House very effectively.

The evidence of John McGaughey and respondent was to the effect that respondent never saw the false certificate presented to Bramlette. These being the only two witnesses obtainable on this particular point, of course

they place the burden upon the shoulders of son John, who is not on trial.

Now, in the light of all these facts, has the State proven such official misconduct, such acts of open and palpable violation of the laws and statutes, such unwarranted changes in the rules of the Land Office, such preference to certain friends in the purchase of public lands, such ignorance of law or fact as would warrant the court in removing respondent from office?

The office of Commissioner of the General Land Office is probably one of the most important in this State, and the duties of that officer are of the widest range, and he probably has a greater discretionary power than any other officer in this government.

It would be totally impracticable to attempt to make a law to cover every act to be performed by that officer. The Legislature must be content to lay down general laws for the government of that office, and leave the details as to its government to the Commissioner. The rules of this office established by the Commissioner assume almost the dignity of a law, and should be adhered to with as much rigidity as the law; these rules should be made only upon the most mature deliberation, and should be changed only when the wisdom of change is patent.

Again, the Commissioner of the Land Office has it in his power, if he so wishes, to largely destroy the property interest of the people of this State in their public lands, and to prefer certain men to their gain, and to the loss of the people of the State. He is of necessity clothed with great discretionary powers.

I submit that under the facts of this case the respondent has not shown that fidelity to the trust imposed in him as he should; that he has preferred certain of his friends in the sale of school lands, when all the people of this State should have had an equal opportunity to buy, and upon this point, if the respondent wished to be fair to all alike, it was his duty when he had made so radical a change in his ruling to the effect that the lands of Harris and Liberty counties could be sold to anyone, either an actual settler or not, that such change in his ruling should have been promulgated with almost the same publicity that a statutory law would.

Ought he not at least to have complied with the law in giving notice to the people of these respective counties

as to this change? A notice which they had a right to expect; and again such an important change of a ruling of that office ought not to have been made upon the solicitation of those directly interested in such changes, and especially is this true when the ruling was changed in Liberty county in order that a disgruntled land agent, one David Boaz, might become a purchaser of some of these lands.

The interest of the people of this State cannot be in safe hands when its Commissioner will reduce the price of the timber of nine sections of land, 14,660 acres, and this when he was in blissful ignorance of whether or not such reduction was warranted, and upon the unsworn statement of an interested party who was not commissioned by law to make such classification, and upon the very day of such deduction to sell such timber to those who had procured such reduction.

The property interest of the public in this State has and will suffer when its Commissioner will sell its public lands at the minimum price of \$2 per acre when such lands can readily be sold at from \$3 to \$5 per acre. But it is urged that these errors came from ignorance and not from a willful disregard of duties and laws. Concede this to be true, the people of this State can demand the removal of an officer for ignorance as well as for corruption. But ignorance or mistake of law or facts is no defense.

"A man who undertakes a public office is bound to know the law and to possess himself diligently of all the facts necessary to enable him in a given case to act prudently and rightly. If he do not, and through mistake of law or fact be guilty of negligence, he commits a penal offense.

"This seems hard law, but is essential to the safety of the State. If an officer enjoying the emoluments of office and wielding its occasionally vast powers should be able to plead in defense of negligence that he mistook either fact or law, not only is there no negligence that can be punished, but ignorance and incompetency would be the masks under which all sorts of official misconducts should be shielded."

The law says: "You are bound to know the law and the facts, and if you lean on advisers or subalterns who mislead you, this is the very thing for which you are to be punished." It is necessary that an officer be held responsible for all his official acts, in order that we may have an efficient

government, and any other doctrine will place a premium on ignorance.
Court adjourned to 3 p. m.

AFTERNOON SESSION.

Court met pursuant to adjournment.
Lieutenant-Governor Crane presiding.

Quorum present.

Senator Kearby moved that the court do now proceed to vote on *each* of the articles of impeachment.

Senator Imboden moved as a substitute that the court retire to Judiciary Room No. 1 for consultation.

Lost.

Senator Kearby's motion was then adopted.

Article 1 of impeachment read, to-wit:

Article 1. That W. L. McGaughey, Commissioner of the General Land Office of the State of Texas, unmindful of the duties of his office, and in violation of his oath of office, did on the 14th day of October, A. D. 1892, in the county of Travis and State of Texas, as Commissioner of the General Land office, unlawfully, knowingly, and in violation of the laws of the State, regulating the sale of public free school lands, offer for sale, and sell to persons who were not then and there actual settlers on such lands, the following described sections of the public free school lands of the State of Texas, situated in Harris county, to-wit:

Sections 16, 18, 20, 22, 24, 28, 30, 32, 34, 36, 46, 48, 50, 52, 54, 58, 60, 62, 64, 66, 68, 70, 72, 74, 76, 78, 80, 82, 84, 86 and 88, in block No. —, of Houston and Texas Central railroad location, which said sections of public free school lands were not then and there under the law subject to sale to others than actual settlers, as said W. L. McGaughey, then and there well knew, but were reserved for sale to actual settlers only.

And the said W. L. McGaughey was then and there as aforesaid, guilty of gross misconduct in office, and of a wilful and palpable violation of the laws of the State of Texas.

The question, shall this article of impeachment be sustained? was decided in the negative by the following vote:

YEAS—2.

Dickson, Yoakum.

NAYS—25.

Agnew, Kearby,
Atlee, Lawhon,
Baldwin, Lewis,
Boren, McComb,

Bowser,
Cranford,
Crowley,
Dean,
Douglass,
Greer,
Hutchison,
Imboden,
Jester,

McKinney,
Shelburne,
Simpson,
Smith,
Steele,
Swayne,
Tips,
Woods.

ABSENT—1.

Presler.

EXCUSED—3.

Browning, Whitaker.
Goss,

Article 2 of impeachment read, to-wit:

Article 2. That said W. L. McGaughey, Commissioner of the General Land Office of the State of Texas, unmindful of the duties of his office, and in violation of his oath of office, on the 14th day of October, A. D. 1892, and on divers days thereafter, up to and including the 16th day of December, A. D. 1892, in the county of Travis and State of Texas, as such Commissioner of the General Land Office, unlawfully and in violation of the statutes of the State regulating the sale of the public free school lands of the State, did offer for sale as sections of the public free school lands detached and isolated from other public lands, and did sell the same to other than actual settlers thereon, the following sections of the public free school lands of the State of Texas situated in Harris county, Texas, to-wit:

Sections 16, 18, 20, 22, 24, 28, 30, 32, 34, 36, 46, 48, 50, 52, 54, 58, 60, 62, 64, 66, 68, 70, 72, 74, 76, 78, 80, 82, 84, 86 and 88, in block No. 2, of the Houston and Texas Central Railroad surveys, which said sections of land were not then and there isolated and detached from other public lands within the meaning of the law, and were not then and there subject to sale to other than actual settlers, but were reserved by law for sale to actual settlers only, all of which was then and there well known to said W. L. McGaughey, Commissioner, as aforesaid. And said W. L. McGaughey was then and there, as aforesaid, guilty of misconduct in office, and of a gross violation of chapter 99 of the act of the Twentieth Legislature of the State of Texas, as amended by chapter 56 of the acts of the Twenty-first Legislature of the State of Texas, relating to the lease and sale of the public free school lands of the State.

The question, shall this article of impeachment be sustained? was de-

cided in the negative by the following vote:

YEAS—5.

Dickson, Steele,
Greer, Yoakum.
Lewis,

NAYS—22.

Agnew, Jester.
Atlee, Kearby,
Baldwin, Lawhon.
Boren, McComb,
Bowser, McKinney,
Cranford, Shelburne,
Crowley, Simpson,
Dean, Smith,
Douglass, Swayne,
Hutchison, Tips.
Imboden, Woods.

ABSENT—1.

Presler.

EXCUSED—3.

Browning, Whitaker.
Goss,

Article 3 of impeachment read, to-wit:

Article 3. That W. L. McGaughey, Commissioner of the General Land Office of the State of Texas, unmindful of the duties of his office, and in violation of his oath of office did, on the dates hereinafter mentioned, in the county of Travis, State of Texas, as such Commissioner of the General Land Office, unlawfully, and in violation of the laws of the State regulating the sales of the public free school lands of the State, willfully and knowingly offer for sale, and sell to persons who were not then and there actual settlers on such lands, certain sections of public free school lands situated in Harris county, Texas, which were not then and there under the law subject to sale to others than actual settlers, but were reserved for sale to actual settlers only, all of which was then and there well known to said W. L. McGaughey, Commissioner of the General Land Office as aforesaid. Said several sections so offered for sale and sold, and the dates of sale, and the names of the purchasers of the respective sections are as follows, to-wit:

Certain sections in block No. 2 of the surveys in the name of the Houston and Texas Central Railway Company, to-wit:

No. of section.	Name of purchaser.	Date of sale.
16	C. D. Dillon,	Oct. 14, 1892
20	F. M. Beatty,	Dec. 16, 1892
22	F. M. Beatty,	Dec. 16, 1892
24	C. D. Dillon,	Oct. 14, 1892
28	F. M. Beatty,	Dec. 16, 1892
30	E. R. McLean,	Dec. 16, 1892

32	W. Thompson,	Dec. 16, 1892
34	C. D. Dillon,	Oct. 14, 1892
36	F. P. McLaughlin	Dec. 16, 1892
46	F. P. McLaughlin,	Dec. 16, 1892
48	E. R. McLean,	Dec. 16, 1892
50	F. M. Beatty,	Dec. 16, 1882
52	W. Thompson,	Dec. 16, 1892
54	W. Thompson,	Dec. 16, 1892
58	W. Thompson,	Dec. 16, 1892
60	F. P. McLaughlin,	Dec. 16, 1892
62	S. D. DeCordova,	Dec. 16, 1892
64	I. C. Stafford,	Dec. 16, 1892
66	David Boaz,	Dec. 14, 1892
68	E. R. McLean,	Dec. 16, 1892
70	T. F. Taylor,	Dec. 16, 1892
72	T. F. Taylor,	Dec. 16, 1892
74	T. F. Taylor,	Dec. 16, 1892
76	T. F. Taylor,	Dec. 16, 1892
78	S. D. DeCordova,	Dec. 16, 1892
80	David Boaz,	Dec. 14, 1892
82	P. M. Cuney,	Oct. 23, 1892
84	C. D. Dillon,	Oct. 14, 1892
86	S. D. DeCordova,	Dec. 16, 1892
88	S. D. DeCordova,	Dec. 16, 1892

And said purchasers aforesaid were not then and there actual settlers on said sections sold to them respectively, as said W. L. McGaughey then and there well knew.

The question, shall this article of impeachment be sustained? was decided in the negative by the following vote:

YEAS—8.

Boren, Lewis,
Cranford, McKinney,
Dickson, Steele,
Greer, Yoakum.

NAYS—19.

Agnew, Kearby,
Atlee, Lawhon,
Baldwin, McComb,
Bowser, Shelburne,
Crowley, Simpson,
Dean, Smith,
Douglass, Swayne,
Hutchison, Tips,
Imboden, Woods.
Jester,

ABSENT—1.

Presler.

EXCUSED—3.

Browning, Whitaker.
Goss,

Article 4 of impeachment read, to-wit:

Art. 4. That said W. L. McGaughey, Commissioner of the General Land Office of the State of Texas, unmindful of the duties of his office, and in violation of his oath of office, did, on the several dates hereinafter mentioned, in the county of Travis, in the State of Texas, as such Commissioner of the General Land Office, unlawfully, knowingly, and in violation of

the laws of the State regulating the sale of the public free school lands of the State, erroneously offer for sale as sections of public free school lands isolated and detached from other public lands, and did sell the same to others than actual settlers thereon, certain sections of public school lands situated in Harris county, Texas, which were not then and there under the law isolated and detached from other public lands, and were not subject to sale to others than actual settlers, but were then and there reserved by law for sale to actual settlers only, all of which was then and there well known to said W. L. McGaughey, Commissioner of the General Land Office as aforesaid. Said several sections of land so offered for sale and sold as aforesaid, and the dates of sale and the names of the purchasers of the respective sections are as follows, to-wit, said sections all being in block No. 2 of the Houston and Texas Central Railway surveys, and are as follows:

No. of Section.	Name of Purchaser.	Date of Sale.
16	C. D. Dillon,	Oct. 14, 1892
24	C. D. Dillon,	Oct. 14, 1892
34	C. D. Dillon,	Oct. 14, 1892
84	C. D. Dillon,	Oct. 14, 1892
18	J. I. Dillon,	Oct. 14, 1892
64	I. C. Stafford,	Oct. 23, 1892
82	P. M. Cuney,	Oct. 23, 1892
66	David Boaz,	Dec. 14, 1892
80	David Boaz,	Dec. 14, 1892
20	F. M. Beatty,	Dec. 16, 1892
22	F. M. Beatty,	Dec. 16, 1892
28	F. M. Beatty,	Dec. 16, 1892
50	F. M. Beatty,	Dec. 16, 1892
30	E. R. McLean,	Dec. 16, 1892
48	E. R. McLean,	Dec. 16, 1892
68	E. R. McLean,	Dec. 16, 1892
32	W. Thompson,	Dec. 16, 1892
52	W. Thompson,	Dec. 16, 1892
54	W. Thompson,	Dec. 16, 1892
58	W. Thompson,	Dec. 16, 1892
36	F.P. McLaughlin,	Dec. 16, 1892
46	F.P. McLaughlin,	Dec. 16, 1892
60	F.P. McLaughlin,	Dec. 16, 1892
62	S. D. DeCordova,	Dec. 16, 1892
78	S. D. DeCordova,	Dec. 16, 1892
86	S. D. DeCordova,	Dec. 16, 1892
88	S. D. DeCordova,	Dec. 16, 1892
70	T. F. Taylor,	Dec. 16, 1892
72	T. F. Taylor,	Dec. 16, 1892
74	T. F. Taylor,	Dec. 16, 1892
76	T. F. Taylor,	Dec. 16, 1892

And the said W. L. McGaughey, in manner and form aforesaid, was then and there guilty of a gross violation of the duties of his office and of the laws of the State, and especially of chapter 99 of the Acts of the Twenti-

eth Legislature of the State of Texas, as amended by chapter 56 of the Acts of the Twenty-first Legislature.

The question, shall this article of impeachment be sustained? was decided in the negative by the following vote:

YEAS—8.

Boren,
Cranford,
Dickson,
Greer,

Lewis,
McKinney,
Steele,
Yoakum.

NAYS—19.

Agnew,
Atlee,
Baldwin,
Bowser,
Crowley,
Dean,
Douglass,
Hutchison,
Imboden,
Jester,

Kearby,
Lawhon,
McComb,
Shelburne,
Simpson,
Smith,
Swayne,
Tips,
Woods.

ABSENT—1.

Presler.

EXCUSED—3.

Browning,
Goss,

Whitaker.

Respondent's special demurrer to articles 5 and 6 of articles of impeachment having been sustained by the Court, article 7 of impeachment was read, to-wit:

Article 7. That W. L. McGaughey, Commissioner of the General Land Office of the State of Texas, unmindful of the high duties of his office, and in violation of his oath of office, in the county of Travis, State of Texas, on the 16th day of December, A. D. 1892, did unlawfully and corruptly collude with David Boaz, E. R. McLean, F. M. Beatty, S. D. DeCordova, T. F. Taylor and others for the unlawful purpose of enabling and permitting the persons aforesaid to purchase the said sections of public free school lands in Harris county, described in the foregoing articles of this exhibit, to which reference for description is here made, in violation of the spirit and the intent of the law and at greatly less than their value, and to give them an unfair advantage over the other citizens of the State, and especially over citizens residing in the vicinity of said lands, and did then and there, in furtherance of said unlawful purpose, aforesaid, price said lands to each person as detached and isolated from other public lands, when in truth and in fact the same were not so detached and isolated, as said W. L. McGaughey then and there well knew, and did then and there, without first giving the notice to the county clerk of

Harris county, as required by law, value said land at the price of \$2 per acre, and did then and there offer the same for sale to said persons aforesaid, and did then and there immediately sell the same to said persons aforesaid at said price, when in truth and in fact same were worth the sum of \$5 per acre per section; when in truth and in fact other parties, and especially persons residing in the same vicinity of said lands, who desired an opportunity to purchase the same when the same should be offered for sale, were deprived of any opportunity to apply for the purchase thereof, as said W. L. McGaughey then and there well knew.

The question, shall this article of impeachment be sustained? was decided in the negative by the following vote:

YEAS—8.

Boren,	Lewis,
Cranford,	McKinney,
Dickson,	Steele,
Greer,	Yoakum.

NAYS—19.

Agnew,	Kearby,
Atlee,	Lawhon,
Baldwin,	McComb,
Bowser,	Shelburne.
Crowley,	Simpson,
Dean,	Smith,
Douglass,	Swayne,
Hutchison,	Tips,
Imboden,	Woods
Jester,	

ABSENT—1.

Presler,

EXCUSED—3.

Browning,	Whitaker.
Goss,	

Respondent's special demurrer to article 8 of impeachment having been sustained by the Court, article 9 of impeachment was read, to wit:

Art. 9. That W. L. McGaughey, Commissioner of the General Land Office of the State of Texas, unmindful of the duties of his office, and in violation of his oath of office, did, on the 9th day of January, 1893, up to and including the 23d day of January, 1893, in the county of Travis in the State of Texas, as Commissioner of the General Land Office, unlawfully, knowingly, and in violation of the laws of the State regarding the sale of the public free school lands, offer for sale and did sell to persons who were not then and there actual settlers on such land, the following described sections of public free school lands of

the State of Texas situated in Liberty county, to-wit:

Sections 4, 6, 8, 10, 12, 14, 16, 18, 20 and 24, in the block of lands surveyed for the public free school fund in the name of the Houston and Texas Central Railway Company, and sections 16, 30, 32, 34 and 36, in the block of lands surveyed in the name of the Texas and New Orleans Railway Company, and a tract surveyed for the public free school fund in the name of Thomas K. Wheeler, which said sections of public free school lands were not then and there under the law subject to sale to others than actual settlers, as W. L. McGaughey then and there well knew, but were reserved for sale to actual settlers only. And the said W. L. McGaughey was then and there as aforesaid guilty of misconduct in office and of a willful and palpable violation of the laws of the State of Texas.

The question, shall this article of impeachment be sustained? was decided in the negative by the following vote:

YEAS—8.

Boren,	Lewis,
Cranford,	McKinney,
Dickson,	Steele,
Greer,	Yoakum.

NAYS—19.

Agnew,	Kearby,
Atlee,	Lawhon,
Baldwin,	McComb,
Bowser,	Shelburne,
Crowley,	Simpson,
Dean,	Smith,
Douglass,	Swayne,
Hutchison,	Tips,
Imboden,	Woods.
Jester,	

ABSENT—1.

Presler.

EXCUSED—3.

Browning,	Whitaker.
Goss,	

Article 10 of impeachment read, to-wit:

Article 10. That said W. L. McGaughey, Commissioner of the General Land Office of the State of Texas, unmindful of the duties of his office, and in violation of his oath of office, did, on the 9th day of January, 1893, up to and including the 23d day of January, 1893, in the county of Travis and State of Texas, as such Commissioner of the General Land Office, unlawfully and in violation of the statutes of the State regulating the free school lands of the State, did offer for sale as sections of the public free school lands, detached and isolated

from other public lands, and did sell the same to others than actual settlers thereon, the following sections of public free school lands situated in Liberty county, Texas, to-wit:

Sections 4, 6, 8, 10, 12, 14, 16, 18, 20 and 24, in the block of land surveyed for the public free school fund in the name of the Houston and Texas Central Railway Company, sections 16, 30, 32, 34 and 36, in the block of land surveyed in the name of the Texas and New Orleans Railway Company, and a tract surveyed for the public free school fund in the name of Thos. K. Wheeler, which said lands were not then and there isolated from other public lands, within the meaning of the law, and were not then and there subject to sale to others than actual settlers, but were reserved by law for sale to actual settlers only, all of which was then and there well known to W. L. McGaughey, said Land Commissioner, as aforesaid; and said W. L. McGaughey was then and there, as aforesaid, guilty of misconduct in his office, and of a gross violation of chapter 99 of the act of the Twentieth Legislature of the State of Texas, as amended by chapter 56 of the acts of the Twenty-first Legislature of the State of Texas, relating to the lease and sale of the public free school lands of the State.

The question, shall this article of impeachment be sustained? was decided in the negative, by the following vote:

YEAS—8.

Boren,	Lewis,
Cranford,	McKinney,
Dickson,	Steele,
Greer,	Yoakum.

NAYS—19.

Agnew,	Kearby,
Atlee,	Lawhon,
Baldwin,	McComb.
Bowser,	Shelburne,
Crowley,	Simpson,
Dean,	Smith,
Douglass,	Swayne,
Hutchison,	Tips,
Imboden,	Woods.
Jester,	

ABSENT—1.

Presler.

EXCUSED—3.

Browning,	Whitaker.
Goss,	

Article 11 of impeachment read, to-wit:

Art. 11. That W. L. McGaughey, Commissioner of the General Land

Office of the State of Texas, unmindful of the duties of his office, and in violation of his oath of office, did, on the dates hereinafter mentioned, in the county of Travis, State of Texas, as such Commissioner of the General Land Office, unlawfully and in violation of the laws of the State regulating the sale of the public free school lands of the State of Texas, willfully and knowingly offer for sale, and sold to persons who were not then and there actual settlers on such lands, certain sections of public free school lands situated in Liberty county, Texas, which were not then and there under the law subject to sale to others than actual settlers, but were reserved for sale to actual settlers only, all of which was then and there known to said W. L. McGaughey, Commissioner of the General Land Office, as aforesaid, said certain sections so offered for sale and sold, and the dates of the sale and the names of the purchasers of the respective sections are as follows, to-wit: Certain sections in the block of surveys in the name of the Houston and Texas Central Railway company, to-wit:

No. of Section.	Name of Purchaser.	Date of Sale.
16	D. Boaz,	Jan. 20, 1893
4	E. Friedenhouse,	Jan. 23, 1893
8	E. Friedenhouse,	Jan. 23, 1893
10	E. Friedenhouse,	Jan. 23, 1893
14	E. Friedenhouse,	Jan. 23, 1893
6	D. Adriance,	Jan. 30, 1893
12	W. F. Simmons,	Jan. 19, 1893
12	F. M. Carrol,	Jan. 23, 1893
24	F. M. Carrol,	Jan. 23, 1893
18	J. H. Collett,	Jan. 26, 1893
20	J. H. Collett,	Jan. 26, 1893

And certain surveys in block of lands surveyed in the name of the Texas and New Orleans Railway Company for said free school fund, to-wit:

No. of Section.	Name of Purchaser.	Date of Sale.
16	A. Schwartz,	Jan. 11, 1893
30	A. Schwartz,	Jan. 11, 1893
32	P. J. Lawless,	Jan. 16, 1893
34	P. J. Lawless,	Jan. 16, 1893
36	J. H. Carter,	Jan. 18, 1893

and a survey in the name of Thomas K. Wheeler, and a survey in the name of T. P. Drake, and a survey in the name of D. E. Neville, sold to Henry P. Haldeman on January 9, 1893.

And said purchasers were not then and there actual settlers on said sections sold to them respectively, as said W. L. McGaughey then and there well knew.

The question, shall this article of impeachment be sustained? was de-

cided in the negative by the following vote:

YEAS—8.

Boren,	Lewis,
Cranford,	McKinney,
Dickson,	Steele,
Greer,	Yoakum.

NAYS—19.

Agnew,	Kearby,
Atlee,	Lawhon,
Baldwin,	McComb,
Bowser,	Shelburne,
Crowley,	Simpson,
Dean,	Smith,
Douglass,	Swayne,
Hutchison,	Tips,
Imboden,	Woods.
Jester,	

ABSENT—1.

Presler.

EXCUSED—3.

Browning,	Whitaker.
Goss,	

Article 12 of impeachment read, to-wit:

Art. 12. That said W. L. McGaughey, Commissioner of the General Land Office of the State of Texas, unmindful of the duties of his office, and in violation of his oath of office, did on the several dates hereinafter mentioned, in the county of Travis, and in the State of Texas, as such Commissioner of the General Land Office, unlawfully, knowingly and in violation of the laws of the State regulating the sale of the public free school lands of the State, erroneously offer for sale as sections of public free school land isolated and detached from other public lands, and did sell the same to others than actual settlers thereon, certain sections of public free school land situated in Liberty county, Texas, which were not then and there under the law isolated and detached from other public lands, and were not subject to sale to others than actual settlers, but were then and there reserved by law for sale to actual settlers only, all of which was then and there well known to said W. L. McGaughey, Commissioner of the General Land Office, as aforesaid.

Said several sections of land so offered for sale and sold, as aforesaid, and the dates of the sales and the names of the purchasers of the several sections are as follows, to-wit:

Certain sections in the block of surveys in the name of the Houston and Texas Central Railway Company, to-wit:

No. of Section.	Name of Purchaser.	Date of Sale.
16	D. Boaz,	Jan. 20, 1893
4	E. Friedenhouse,	Jan. 23, 1893
8	E. Friedenhouse,	Jan. 23, 1893
10	E. Friedenhouse,	Jan. 23, 1893
14	E. Friedenhouse,	Jan. 23, 1893
6	D. Adriance,	Jan. 30, 1893
E. 12	W. F. Simmons,	Jan. 19, 1893
W. 12	F. M. Carrol,	Jan. 23, 1893
24	F. M. Carrol,	Jan. 23, 1893
18	J. H. Collett,	Jan. 26, 1893
20	J. H. Collett,	Jan. 26, 1893

And certain surveys in blocks of land surveyed in the name of the Texas and New Orleans Railway company for said free school fund, to-wit:

No. of Section.	Name of Purchaser.	Date of Sale.
16	A. Schwartz,	Jan. 11, 1893
30	A. Schwartz,	Jan. 11, 1893
32	P. J. Lawless,	Jan. 16, 1893
34	P. J. Lawless,	Jan. 16, 1893
36	J. H. Carter,	Jan. 18, 1893

And a survey in the name of Thomas K. Wheeler, and a survey in the name of T. P. Drake, and a survey in the name of D. E. Neville, sold to Henry P. Haldeman on the 9th day of January, 1893.

And said purchasers were not then and there actual settlers on said sections sold to them respectively, as said W. L. McGaughey then and there well knew.

The question, shall this article of impeachment be sustained? was decided in the negative by the following vote:

YEAS—8.

Boren,	Lewis,
Cranford,	McKinney,
Dickson,	Steele,
Greer,	Yoakum.

NAYS—19.

Agnew,	Kearby,
Atlee,	Lawhon,
Baldwin,	McComb,
Bowser,	Shelburne,
Crowley,	Simpson,
Dean,	Smith,
Douglass,	Swayne,
Hutchison,	Tips,
Imboden,	Woods.
Jester,	

ABSENT—1.

Presler,

EXCUSED—3.

Browning,	Whitaker.
Goss,	

Article 13, of impeachment, read, to-wit:

Art. 13. That W. L. McGaughey, Commissioner of the General Land Office of the State of Texas, unmind-

ful of the duties of his office, and in violation of his oath of office, did on the 9th day of January, 1893, and up to and including the 23d day of January, 1893, in the county of Travis and State of Texas, as Commissioner of the General Land Office, unlawfully and knowingly, and by gross negligence, offer for sale and sell at the price of \$2 per acre said sections of public free school lands situated in Liberty county and described in articles 9 to 12 inclusive, which descriptions are here referred to and made a part hereof, which said price was greatly below the worth of said lands, the said sections each being then and there worth the sum of \$5 per acre, as said W. L. McGaughey then and there well knew.

The question, shall this article of impeachment be sustained? was decided in the negative by the following vote:

YEAS—5.

Boren, Steele,
Dickson, Yoakum.
McKinney,

NAYS—22.

Agnew, Jester,
Atlee, Kearby,
Baldwin, Lawhon,
Bowser, Lewis,
Cranford, McComb,
Crowley, Shelburne,
Dean, Simpson,
Douglass, Smith,
Greer, Swayne,
Hutchison, Tips,
Imboden, Woods.

ABSENT—1.

Presler.

EXCUSED—3.

Browning. Whitaker.
Goss,

Article 14 of impeachment read, to-wit:

Art. 14. That said W. L. McGaughey, Commissioner of the General Land Office of the State of Texas, unmindful of the duties of his office, and in violation of his oath of office, did, on the 9th day of January, 1893, and up to and including the 23rd day of January, 1893, unlawfully and knowingly offer for sale and sell as sections isolated and detached from other public lands, the following sections of public free school lands situated in Liberty county, Texas, to-wit:

Sections 4, 6, 8, 10, 12, 14, 16, 18, 20 and 24, in the block of lands surveyed for the public free school fund in the name of the Houston and Texas Central Railway company, and sections 16, 30, 32, 34 and 36, in the blocks of land

surveyed in the name of the Texas and New Orleans Railway company, and a tract surveyed for the public free school fund in the name of Thos. K. Wheeler, which said sections of the public free school lands were not then and there under the law subject to sale to others than actual settlers, as W. L. McGaughey then and there well knew, but were reserved for sale to actual settlers only. And the said W. L. McGaughey was then and there, as aforesaid, guilty of misconduct in office, and of a willful and palpable violation of the laws of the State of Texas.

The question, shall this article of impeachment be sustained? was decided in the negative by the following vote:

YEAS—7.

Boren, McKinney,
Dickson, Steele,
Greer, Yoakum.
Lewis,

NAYS—20.

Agnew, Jester,
Atlee, Kearby,
Baldwin, Lawhon,
Bowser, McComb,
Cranford, Shelburne,
Crowley, Simpson.
Dean, Smith,
Douglass, Swayne,
Hutchison, Tips,
Imboden, Woods.

ABSENT—1.

Presler.

EXCUSED—3.

Browning. Whitaker.
Goss,

Article 15 of impeachment read, to-wit:

Art. 15. That W. L. McGaughey, Commissioner of the General Land Office of the State of Texas, unmindful of the high duties of his office, and in violation of his oath of office, in the county of Travis, State of Texas, did, on the 9th day of January, 1893, unlawfully and corruptly collude with David Boaz, E. Friedenhaus and others for the unlawful purpose of enabling and permitting said persons aforesaid to purchase the said sections of public free school lands in Liberty county, described in the foregoing articles in this exhibit, to which reference for description is here made, in violation of the spirit and the intent of the law, at greatly less than their value, and to give them unfair advantage over the citizens of the State, and especially over the citizens residing in the vicinity of said lands, and did then and there in furtherance of said unlawful

purpose aforesaid, price said lands to said persons as detached and isolated from other public lands, when in truth and in fact, the same were not so detached and isolated, as said W. L. McGaughey then and there well knew, and did then and there without first giving the notice to the county clerk of Liberty county, as required by law, price said lands at the price of \$2 per acre, and did then and there offer the same for sale to said persons aforesaid, and did then and there immediately sell the same to said persons aforesaid at said price, when in truth and in fact, same were worth the sum of \$5 per acre per section, and when in truth and in fact other parties, and especially persons residing in the vicinity of said lands who desired an opportunity to purchase the same when the same should be offered for sale, were deprived of any opportunity to apply for the purchase thereof, as said W. L. McGaughey then and there well knew.

The question, shall this article of impeachment be sustained? was decided in the negative by the following vote:

YEAS—6.

Boren,	Lewis,
Dickson,	Steele,
Greer,	Yoakum.

NAYS—21.

Agnew,	Kearby,
Atlee,	Lawhon,
Baldwin,	McComb,
Bowser,	McKinney,
Cranford,	Shelburne,
Crowley,	Simpson,
Dean,	Smith,
Douglass,	Swayne,
Hutchison,	Tips,
Imboden,	Woods.
Jester,	

ABSENT—1.

Presler.

EXCUSED—3.

Browning,	Whitaker.
Goss,	

Respondent's special demurrers to articles 16, 17, 18, 19 and 20 of the articles of impeachment having been sustained by the court, article 21 of impeachment was read, to-wit:

Art. 21. That said W. L. McGaughey, Commissioner of the General Land Office of the State of Texas, unmindful of the duties of the office and of his oath of office, and in gross violation of the regulations of the said Land Office, and of the laws of the State of Texas, relating to the lease and sale of the public free school lands, did, in

the county of Travis and State of Texas, on, to-wit, the 1st day of November, A. D. 1892, and on divers days thereafter, up to and including the 10th day of January, 1893, unlawfully and improperly cancel the valuation theretofore lawfully placed upon the timber upon certain public free school lands, to-wit: The timber upon

Section No.	Certificate No.	Original Grantee.
10	905	H. & T. C. R'y Co.
12	911	H. & T. C. R'y Co.
36	25-1303	H. & T. C. R'y Co.

All of said lands being situated in Newton county, Texas, and did then and there improperly, and in violation of the laws of the State, reprice and revalue the timber growing upon said lands upon the statement and representation, and at the instance and request of one E. I. Kellie, who was not then and there an agent of the State of Texas, but he, the said E. I. Kellie, was then and there in the service and employ of parties other than the State of Texas, all of which the said W. L. McGaughey then and there well knew, whereby the said W. L. McGaughey was then and there guilty of gross misconduct in office, and of a willful and palpable violation of the laws of the State of Texas.

The question, shall this article of impeachment be sustained? was decided in the negative by the following vote:

YEAS—6.

Cranford,	McKinney,
Dickson,	Steele,
Lewis,	Yoakum.

NAYS—21.

Agnew,	Jester,
Atlee,	Kearby,
Baldwin,	Lawhon,
Boren,	McComb,
Bowser,	Shelburne,
Crowley,	Simpson,
Dean,	Smith,
Douglass,	Swayne,
Greer,	Tips,
Hutchison,	Woods.
Imboden,	

ABSENT—1.

Presler.

EXCUSED—3.

Browning,	Whitaker.
Goss,	

Article 22 of impeachment read, to-wit:

Art. 22. That said W. L. McGaughey, Commissioner of the General Land Office of the State of Texas, unmindful of the duties of his office

and of his oath of office, and in gross violation of the regulation of the said Land Office and of the laws of the State of Texas relating to the sale and lease of the public free school lands, did, in the county of Travis and State of Texas, on to-wit, the 20th day of January, 1893, and on divers days thereafter, up to and including the 20th day of March, 1893, unlawfully and improperly cancel the valuation theretofore lawfully placed upon the timber upon certain public free school lands, to-wit: The timber upon

Certificate

Section.	No.	Original Grantee.
50	545	H. & T. C. Ry. Co.
52	546	H. & T. C. Ry. Co.
66	829	H. & T. C. Ry. Co.
68	830	H. & T. C. Ry. Co.
118	25-1220	H. & T. C. Ry. Co.

All of said lands being situated in Jasper county, Texas, and did then and there improperly and in violation of the laws of the State, reprice and revalue the timber growing upon said lands, upon the statement and representation and at the instance and request of one E. I. Kellie, who was not then and there an agent of the State of Texas, but he, the said E. I. Kellie, was then and there acting in the service and employ of persons other than the State of Texas, all of which the said W. L. McGaughey then and there well knew, whereby the said W. L. McGaughey was then and there guilty of gross misconduct in office and of a willful and palpable violation of the laws of the State of Texas.

The question, shall this article of impeachment be sustained? was decided in the negative by the following vote:

YEAS—6.

Cranford,	McKinney,
Dickson,	Steele,
Lewis,	Yoakum.

NAYS—21.

Agnew,	Jester,
Atlee,	Kearby,
Baldwin,	Lawhon,
Boren,	McComb,
Bowser,	Shelburne,
Crowley,	Simpson,
Dean,	Smith,
Douglass,	Swayne,
Greer,	Tips,
Hutchison,	Woods.
Imboden,	

ABSENT—1.

Presler.

EXCUSED—3.

Browning,	Whitaker.
Goss,	

13—Ct. Jour.

Respondent's special demurrers to articles 23 and 24 of the articles of impeachment having been sustained by the Court, article 25 of impeachment was read, to-wit:

Art. 25. That the said W. L. McGaughey, Commissioner of the General Land Office, did, in Travis county, Texas, on or about the 24th day of March, 1893, fraudulently attempt to procure from William Bramlette, chief clerk of the General Land Office, a false certificate in writing to a certain map of Liberty county, Texas, said certificate in words and figures substantially to-wit:

I, William Bramlette, chief clerk of the General Land Office, hereby certify that the sections marked "blue" on this map were, when sold, detached and isolated from other unappropriated public lands.

Given under my hand and seal of the General Land Office of the State of Texas, March 24, 1893.

That said map referred to in said certificate was a map of Liberty county, Texas, and the sections referred to in said certificate as marked "blue" were not detached and isolated from other unappropriated public lands, and the said W. L. McGaughey well knew that said sections were not detached and isolated as stated in said certificate as shown on said map, but the said W. L. McGaughey did then and there, as aforesaid, falsely pretend to, and attempt to fraudulently induce the said Wm. Bramlette to sign said certificate, and the said W. L. McGaughey did then and there know that said certificate was a false certificate at the time and in the manner aforesaid.

The question, shall this article of impeachment be sustained? was decided in the negative by the following vote:

YEAS—none.

NAYS—27.

Agnew,	Kearby,
Atlee,	Lawhon,
Baldwin,	Lewis,
Boren,	McComb,
Bowser,	McKinney,
Cranford,	Shelburne,
Crowley,	Simpson,
Dean,	Smith,
Dickson,	Steele,
Douglass,	Swayne,
Greer,	Tips,
Hutchison,	Woods,
Imboden,	Yoakum.
Jester,	

ABSENT—1.

Presler.

EXCUSED—3.

Browning, Whitaker.
Goss,

Article 26 of the articles of impeachment read, to-wit:

Art. 26. That the said W. L. McGaughey, Commissioner of the General Land Office did, in Travis county, Texas, on or about the 24th day of March, 1893, fraudulently attempt to procure from William Bramlette, chief clerk of the General Land Office, a false certificate in writing to a certain map of Liberty county, Texas, said certificate in words and figures substantially, to-wit:

I, William Bramlette, chief clerk of the General Land Office, hereby certify that the sections marked blue on this map were, when sold, detached and isolated from other public lands.

Given under my hand and seal of the General Land Office of the State of Texas, March 24, 1883.

That said map referred to in said certificate was a map of Liberty county, Texas, and the sections referred to in said certificate as marked "blue" were not detached and isolated from other public lands, and the said W. L. McGaughey well knew that said sections were not detached and isolated, as stated in said certificate as shown on said map, but the said W. L. McGaughey did then and there as aforesaid falsely pretend to and attempt to fraudulently induce the said William Bramlette to sign said certificate, and the said W. L. McGaughey did then and there know that said certificate was a false certificate at the time and in the manner aforesaid.

The question, shall this article of impeachment be sustained? was decided in the negative by the following vote:

YEAS—none.

NAYS—27.

Agnew,
Atlee,
Baldwin,
Boren,
Bowser,
Cranford,
Crowley,
Dean,
Dickson,
Douglass,
Greer,
Hutchison,
Imboden,
Jester,

Kearby,
Lawhon,
Lewis,
McComb,
McKinney,
Shelburne,
Simpson,
Smith,
Steele,
Swayne,
Tipton,
Woods,
Yoakum.

ABSENT—1.

Presler.

EXCUSED—3.

Browning, Whitaker.
Goss,

Senator Kearby moved that the court retire to Judiciary Committee room No. 1 to make up its judgment. Lost.

Senator Hutchison moved that a judgment of acquittal of W. L. McGaughey, the respondent be entered of record, and that a certified copy of such judgment be deposited in the office of the Secretary of State.

Senator Lewis offered to amend by adding the following: "And that the House of Representatives be notified of the action of the Court of Impeachment, and that a certified copy of the said judgment be sent to the said House of Representatives."

Senator Hutchison accepted the amendment.

The motion as amended was adopted. On motion of Senator Imboden the court adjourned.

APPENDIX.

In Senate, April 17, 1893, general appropriation bill being under consideration.

Pending further action the President administered the following oath to C. H. Allen, Sergeant-at-Arms, and V. F. Pace, Assistant Sergeant-at-Arms, to-wit: Do you solemnly swear that you will faithfully perform all the duties of sergeant-at-arms of the court of impeachment formed to try the proceedings pending against W. L. McGaughey, Land Commissioner, so help you God.

Also, Secretary A. M. Kennedy and Second Assistant Secretary R. W. Holbrook took the following oath: Do you solemnly swear that you will faithfully perform all the duties of secretary of the court of impeachment formed to try the proceedings pending against W. L. McGaughey, Land Commissioner, so help you God.

IN SENATE.

On April 24, President Pro Tem. Kearby, having been absent from the initiatory proceedings of the court of impeachment, was administered the following oath by Hon. E. J. Simkins, associate justice of the civil court of appeals, to-wit: Do you solemnly swear that in all things appertaining to the trial of the impeachment of W. L. McGaughey, Commissioner of the General Land Office of the State of Texas, you will do impartial justice according to the law, so help you God.

On April 28, Mr. Wm. Hodges having been elected Assistant Journal Clerk to succeed A. S. Thweatt, who had resigned, President Pro Tem. Kearby administered to Mr. Hodges the following oath: Do you solemnly swear that you will faithfully perform all the duties of assistant journal clerk of the Senate of the Twenty-third Legislature and as assistant clerk of the court of impeachment, so help you God.

AMENDMENTS TO COURT RULES.

Resolved, That the sessions of the court of impeachment commencing Monday morning, May 1, shall be as follows: Morning session convene at 9 a. m. and adjourn at 1 p. m.; afternoon session shall convene at 3 p. m. and adjourn at 6 p. m., and that night sessions shall consider the appropriation bill and other bills and legislation.

Adopted in Senate, April 29.

Amend rule 6 (Impeachment Court), line 7, page 12, by striking out the word "thirty" and insert in lieu thereof "ten."

Adopted in Senate, May 1.

Resolved, That the following oath shall be administered to all the witnesses in the impeachment of W. L. McGaughey, Commissioner of the General Land Office of the State of Texas, to-wit:

"You do solemnly swear (or affirm, as the case may be), that the evidence you shall give in the case now pending between the State of Texas and W. L. McGaughey shall be the truth, the whole truth, and nothing but the truth, so help you God."

Adopted in Senate, May 1.

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